NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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1985

FEDERAL REGISTER

Vol. 81 Friday,

No. 146 July 29, 2016

Pages 49855–50282

OFFICE OF THE FEDERAL REGISTER

1985

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AB24

Reauthorization of the United States Grain Standards Act

AGENCY: Grain Inspection Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising existing regulations and adding new regulations under the United States Grain Standards Act (USGSA), as amended, in order to comply with amendments to the USGSA made by the Agriculture Reauthorizations Act of 2015. Specifically, this rulemaking eliminates mandatory barge weighing, removes the discretion for emergency waivers of inspection and weighing, revises GIPSA's fee structure, revises exceptions to official agency geographic boundaries, extends the length of licenses and designations, and imposes new requirements for delegated States.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Barry Gomoll, 202–720–8286.

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Overview

On September 30, 2015, President Obama signed into law the Agriculture Reauthorizations Act of 2015, Public Law 114–54 (The Reauthorization Act). In addition to extending certain provisions of the USGSA (7 U.S.C. 71–87k) to 2020, the Reauthorization Act also made several changes to the existing law. Therefore, GIPSA issued a proposed rule in the **Federal Register** to amend 7 CFR part 800 to comply with the amendments made by the Reauthorization Act and solicited comments from interested parties (81 FR 3970). Specifically, GIPSA proposed to:

- Remove the requirement to officially weigh inbound barge shipments at export port locations (§ 800.15 and § 800.216);
- approve requests for waivers of official inspection and weighing requirements for export grain in "emergencies or other circumstances that would not impair the objectives of the [USGSA] whenever the parties to a contract for such shipment mutually agree to the waiver and documentation of such agreement is provided to the Secretary prior to shipment" (§ 800.18);
- base the portion of fees assessed on tonnage on the 5-year rolling average of export tonnage volume (§ 800.71);
- adjust fees annually to maintain a 3 to 6 month operating reserve for inspection and supervision services (§ 800.71);
- remove the provision that allows applicants to request service from an official agency outside an assigned geographic region after 90 days of nonuse of service (§ 800.117);
- waive the geographic boundaries established for official agencies between two adjacent official agencies if both official agencies agree in writing to the waiver (§ 800.117);
- without changing current termination dates, terminate inspection licenses every 5 years instead of every 3 years (§ 800.175);
- require delegated States to notify GIPSA of any intent to temporarily discontinue official inspection or weighing services at least 72 hours in advance, except in the case of a major disaster (§ 800.195);
- review delegated states every 5 years and certify that they comply with the requirements for delegation under the USGSA (§ 800.195);
- require designated official agencies to respond to concerns identified during GIPSA's consultations with customers as part of the renewal of a designation (§ 800.196); and
- extend the minimum length of designation for official agencies from 3 years to 5 years (§ 800.196).

Fees

GIPSA last made changes to its fee schedule on May 1, 2013 (78 FR 22151–66). At that time, GIPSA determined that the existing fee schedule for inspection and weighing services would not generate sufficient revenue to adequately cover program costs through fiscal year 2017. To correct this problem and to build an operating reserve, GIPSA increased fees by 5 percent in fiscal year 2013 and an additional 2 percent for each successive year through fiscal year 2017.

In addition, GIPSA restructured its tonnage fees to more accurately reflect the administrative and supervisory costs at the national and local level. In order to establish an equitable tonnage fee for all export tonnage utilizing the official system, GIPSA began assessing the national tonnage fee on all export grain inspected and/or weighed (excluding land carrier shipments to Canada and Mexico) by delegated States and designated agencies. GIPSA also shifted workers compensation costs from the national to the local level to fully reflect where those workers compensation costs originated.

Prior to the Reauthorization Act, GIPSA used projected future tonnage volumes as a basis to calculate tonnage fees. The Reauthorization Act amended the USGSA to require that tonnage fees be based on the five-year rolling average of export tonnage volumes. In order to comply with this new tonnage fee requirement, GIPSA proposed to adjust both the national and local tonnage fees on a yearly basis. GIPSA proposed that the national tonnage fee would be the national program administrative costs (the costs of management and support of official inspection and weighing) for the previous fiscal year divided by the average export tonnage for the previous 5 fiscal years. Also, the local tonnage fees would be the Field Office administrative costs (the costs of management, support, and maintenance of each Field Office) for the previous fiscal year divided by the average tonnage serviced by that Field Office for the previous 5 fiscal years.

The Reauthorization Act further requires adjustment of all of GIPSA's fees for the performance, supervision, and administration of official inspection and weighing services at least annually to maintain a 3 to 6 month operating reserve. Given that the number of requests for official inspection and weighing services varies with the amount of grain produced and exported from year to year, an operating reserve allows funding of operations in periods during which revenue may not equal or exceed costs. In order to maintain an appropriate level of operating reserve, GIPSA proposed to increase or decrease inspection and weighing fees when the operating reserve is less than 3 times or more than 6 times monthly operating expenses. For each $1 million that the operating reserve is below 3 months or above 6 months of the operating expenses, GIPSA would increase or decrease fees by 2 percent, respectively. GIPSA also proposed to set a 5 percent limit on changes to fees for service per calendar year. GIPSA's annual user fee revenue for performance, supervision, and administration of official inspection and weighing is approximately $40 million. Therefore, an increase or decrease of 2 to 5 percent would approximately equal between $0.8 and $2 million annually.

In addition to these annual reviews of fees, GIPSA will continue to evaluate the financial status of the official inspection and weighing services to ensure that the revenue for each service covers the cost to GIPSA of providing that service. Also, GIPSA will continue to seek out cost saving measures and implement appropriate changes to reduce costs and minimize the need for fee increases.

This action is authorized under the USGSA (7 U.S.C. 79(j)), which provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered, including associated administrative and supervisory costs. The tonnage fees cover the GIPSA administrative and supervisory costs for the performance of GIPSA's official inspection and weighing services; including personnel compensation and benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

Exceptions to Geographic Boundaries

The Reauthorization Act requires changes to GIPSA's exception program for official agencies to operate outside of their geographically assigned areas. Prior to the Reauthorization Act, the regulations provided for three types of exceptions: Timely service, nonuse of service for 90 consecutive days, and barge probe inspections. The Reauthorization Act amended the USGSA to eliminate the nonuse of service exception and add a provision for geographically adjacent agencies to provide service in each other's assigned geographic territories at an applicant's request if both agencies agree in writing. GIPSA proposed to revise the current regulations to comply with the changes to the USGSA by the Reauthorization Act.

GIPSA currently has 95 agreements for agencies to operate outside of their assigned territories and GIPSA will continue to honor those agreements. Under GIPSA's proposed rule, an agency would be permitted to provide service at a location in another adjacent agency's territory, provided that both agencies and the applicant for service submit an agreement in writing to GIPSA.

Delegations

As required by the Reauthorization Act, GIPSA proposed to impose new requirements on State agencies that GIPSA delegates to perform export inspection and weighing services at export port locations under the USGSA. The Reauthorization Act requires the Secretary to certify that State agencies continue to meet statutory requirements. Accordingly, GIPSA will review each delegated state every 5 years to determine that it meets the criteria for delegation set forth in the USGSA. GIPSA proposed to implement a process mirroring the existing process that GIPSA uses to renew the designations of official agencies. The Reauthorization Act also requires that a delegated State must notify GIPSA in writing of any intent to discontinue providing official service at least 72 hours prior to discontinuation. GIPSA proposed to add this requirement to the section of the regulations concerning responsibilities of delegated States (7 CFR 800.195(f)).

Emergency Waivers

The Reauthorization Act amended the USGSA (7 U.S.C 77(a)(1)) to state, "The Secretary shall waive the foregoing requirement [that all grain exported from the U.S. be officially inspected and weighed] in emergency or other circumstances that would not impair the objectives of this chapter whenever the parties to a contract for such shipment mutually agree to the waiver and documentation of such agreement is provided to the Secretary prior to shipment." This change to the USGSA substituted the word "shall" in place of the former word "may," indicating that GIPSA no longer has discretion to approve waivers of official inspection and weighing requirements in emergencies. For this reason, GIPSA determined that it is important to clarify what constitutes an emergency.

In the proposed rule, GIPSA proposed to define the term "emergency" in 7 CFR 800.00 as "a situation outside the control of the Service or a delegated State that prevents prompt issuance of certificates in accordance with § 800.160(c)." The proposed rule linked the definition of "emergency" to the timely issuance of certificates. Upon further reflection, linking waivers to certification does not cover situations where no service is provided. Certificates would never be issued in circumstances where no official inspection or weighing occurs. Accordingly, GIPSA is revising the definition of "emergency" from the proposed rule to more closely tie emergency situations to the ability of GIPSA or a delegated State to provide official services in a timely manner when requested. The issuance of certificates, as described in 7 CFR 800.160(c), provides that a certificate must be issued by the close of business on the next business day after inspection or weighting. The proposed regulation incorporated that time period. Currently, 7 CFR 800.18(b)(6) provides a 24-hour period for granting a waiver for circumstances in which service is not available. Because GIPSA is no longer linking emergency waivers with only the issuance of certificates in 800.160(c), GIPSA has decided to set the determination for emergency waivers based on this same time frame as 800.18(b)(6).

Timely service delivery ensures that GIPSA will continue to facilitate the marketing of cereals and oilseeds and issue certificates in accordance with the regulations. To that end, the emergency waiver provisions provide a mechanism for grain shipments to continue in a situation that prevents service delivery within 24 hours of the scheduled service time.

Comment Review

GIPSA received nine comments in response to the proposed rule published January 25, 2016, in the **Federal Register** (81 FR 3970). One comment was a request for extension of the comment period, which GIPSA granted on February 24, 2016 (81 FR 9122). Two grain industry associations submitted a joint comment, which was supported by an additional submission from several other grain industry associations. Other comments were submitted by an association of official inspection agencies, a farm organization, a grain elevator operator, and two private individuals, one of whom submitted two separate comments. Two of the eight comments concerned quinoa and rice standards, commodities which are not covered under the USGSA and this rulemaking. All comments were supportive of the proposed rule, with some suggested changes to the proposed regulations. Suggestions are addressed below in the order they appear in the regulations.

Emergency Waivers (7 CFR 800.0 and 18)

Several commenters suggested changes to GIPSA's proposed definition of the term "emergency." The grain industry associations suggested that GIPSA remove the terms "outside of the control of the Service or a delegated State" from the definition. They felt this would allow GIPSA to use excuses to avoid issuing emergency waivers. The farm organization commented that waivers of official inspection and weighing, even in emergency situations, could impair the objectives of the USGSA. They suggested that GIPSA define "emergency," as narrowly as possible.

GIPSA notes that the intent of Congress in changing the language of the USGSA is to remove the Secretary's discretionary authority to deny emergency waivers. But, GIPSA does not agree with the industry associations' comment that GIPSA does not have the authority to define the term through the rulemaking process. Without a concrete definition, what constitutes an emergency is ambiguous and requires clarification.

For example, the industry associations' suggestion that any situation that prevents service should constitute an emergency is far too broad. This suggestion makes possible "emergency" situations in cases where the applicant or other interested party could have otherwise taken steps to allow official inspection or weighing to occur. GIPSA does agree, however, with the industry associations' comment that whether the situation is under the control of GIPSA should not matter for determining an emergency. But, GIPSA also agrees with the farm organization's comment that excessive waivers could impair the USGSA as they allow grain to be exported from the U.S. without official inspection or weighing.

Therefore, GIPSA finds it important to define "emergency" in the regulations to prevent future confusion over what does and does not constitute an emergency. GIPSA is adopting a definition of "emergency" to describe situations outside of the control of the applicant for service, as defined in the regulations. Under this definition, applicants would still be responsible for complying with the requirements for obtaining official service listed in 7 CFR 800.46.

Waivers for Other Circumstances (7 CFR 800.18)

The industry associations and farm organization both addressed the issuance of waivers in circumstances other than emergencies. The industry associations point out that the language of the USGSA provides for mandatory waivers in instances other than emergencies for "other circumstances that would not impair the objectives of the USGSA when the buyer and seller agree to waive official inspection and weighing requirements." The associations requested that GIPSA revise the language in 7 CFR 800.18(b)(7)(A) and (B) to be inclusive of this. The associations contend that waivers must be granted regardless of whether an "emergency" exists. The farm organization maintains that by allowing grain to ship without certification of quality or quantity, waivers impair the objectives of the USGSA and should not be granted in non-emergency situations.

7 CFR 800.18 provides for two categories of waivers: (1) Emergency and (2) other circumstances that do not impair the objectives of the USGSA. The Reauthorization Act removed GIPSA's discretionary authority to approve such waivers but added to the second category the condition that the parties to a contract must mutually agree to the waiver and provide documentation to GIPSA. The proposed rule incorporated portions of this language in 7 CFR 800.18, but review of the comments showed that this interpretation would be misconstrued to connect "emergency waivers" with the "other circumstances" waivers.

In the Congressional findings and declaration of policy (7 U.S.C. 74), the objectives of the USGSA include "that grain may be marketed in an orderly and timely manner and that trading in grain may be facilitated" and "that the primary objective of the official United States standards for grain is to certify the quality of grain as accurately as practicable."

GIPSA already provides for waivers in "other circumstances that would not impair objectives of [the USGSA]" in 7 CFR 800.18. GIPSA provides waivers for: Elevators that ship fewer than 15,000 metric tons in a calendar year, grain exported for seeding purposes, grain shipped in bond, grain exported by rail or truck to Canada or Mexico, grain not sold by grade (7 U.S.C. 77 provides for this specific category of waiver), service not available, and high quality specialty grain shipped in containers. GIPSA has determined that these circumstances, as described in the regulations, do not impair the objectives of the USGSA and that granting them helps facilitate the marketing of U.S. grain. GIPSA has historically used the notice-and-comment process of the **Federal Register** to determine which circumstances do not impair the objectives of the USGSA. Soliciting public opinion is the best method for determining other classes of waivers that do not impair the objectives of the USGSA. GIPSA agrees with the farm organization that waivers run counter to the objective of certifying grain as accurately as practicable and that excessive waivers would lead to a loss of confidence in U.S. exports. Provided that parties reach mutual agreement and provide notice to GIPSA, the amended USGSA requires GIPSA to consider what other circumstances for waivers would not impair the objectives of the USGSA. Additional general regulation is not required. For these reasons, GIPSA is omitting the proposed sections 800.118(b)(7)(B) & (C) from the final rule and is not adding a new blanket category of waivers for situations in which the buyer and seller agree to waive official inspection or Class X weighing.

Fees for Official Inspection and Weighing (7 CFR 800.71)

The grain industry associations recommend that GIPSA use the midpoint of the 3 to 6 month reserve figure as the determination of when fees are to be adjusted. They suggest that fees should be raised or lowered based on whether they exceed or fall below 4.5 months reserve. They agreed with GIPSA's proposal of 2 percent increase per $1 million above or below the target amount, though they disagreed with GIPSA's proposal of a 5 percent limit per year on increases or decreases and suggested there be no limit.

GIPSA agrees with the recommendation of setting the trigger for adjusting fees at the midpoint of 4.5 months reserve. This target should better help GIPSA to maintain a 3 to 6 month operating reserve. GIPSA disagrees with the grain industry associations' suggestion that there be no limit. GIPSA believes that a yearly limit on fee increases and decreases is necessary to provide a more stable fee structure from year to year, which affects all sectors of the industry. While a large decrease would likely be welcomed by producers, marketers, and consumers, GIPSA believes that the possibility of a large increase in future years would be untenable to these same groups. In the April 15, 2013, fee rule (78 FR 22151), GIPSA increased fees by 5 percent in the first year and by 2 percent in each ensuing year, in order to minimize the impact of a large increase. GIPSA feels that the annual 5 percent cap follows this precedent of minimizing the impact of large fee changes. Moreover, if the monthly operating reserve falls outside the 3 to 6 month reserve by an amount that cannot be adjusted by the automatic corrections established in this regulation, then GIPSA will reconsider the fees through additional rulemaking.

The grain industry associations recommended that GIPSA suspend the fee for supervision of official agency inspection and weighing, which GIPSA has done with a notice in the June 28, 2016, edition of the **Federal Register** (81 FR 41790). Their recommendations for changes to fees for rice and commodity inspections fall outside the scope of this rulemaking.

The grain industry associations recommended that GIPSA perform annual reviews of all fees in Schedule A of 7 CFR 800.71 in order to keep them in balance with each other. GIPSA currently conducts such a review approximately every five years. GIPSA proposed adding language to the regulations declaring its intent to continue periodic reviews. These reviews are intended to ensure that the fees for service are closely aligned with GIPSA's costs to provide these services. These reviews, along with departmental approval, comment solicitation, and comment review are often lengthy and costly processes. Because the automatic increases and decreases of all fees should maintain a 3 to 6 month operating reserve, GIPSA believes a complete review of fees every year would impose unnecessary time and money costs that would exceed any potential gain to stakeholders.

The grain industry associations recommended that GIPSA perform an annual review of expenses and work to bring those expenses down. They also mentioned that GIPSA should publish financial data for the preceding fiscal year by the beginning of the ensuing calendar year.

GIPSA is aware that the export grain industry is highly competitive and operates on slim margins. Accordingly, GIPSA takes measures to reduce costs whenever possible. In the recent past, GIPSA reduced cost by taking advantage of employee attrition to not fill positions after retirement, using intermittent and seasonal employees in export offices, and using alternative work schedules in order to reduce employee overtime hours. GIPSA publishes extensive financial data in its annual report to Congress. Additionally, GIPSA has made and will continue to make financial information available on its public Web site prior to the release of the annual report to Congress.

Geographic Boundary Exceptions (7 CFR 800.117)

The commenter representing an official inspection agency association recommended that GIPSA change the proposed language in 7 CFR 800.117(b)(3) to reflect the intent of Congress to remove GIPSA's discretion to approve waivers of official agency boundaries based on signed agreements. They acknowledge that GIPSA must still be notified of such agreements and review the agreements for compliance with the USGSA. Another commenter expressed support for allowing such agreements between adjacent official agencies. Since the Reauthorization Act amended the USGSA to read that "the Secretary shall allow a designated official agency to cross boundary lines" if certain provisions are met (7 U.S.C. 79(f)(2)), GIPSA agrees with the recommendation and is changing the language contained in the proposed rule.

Delegations (7 CFR 800.195)

The grain industry association commenters recommended a few changes to GIPSA's proposed rule language concerning delegations of State agencies. They recommended that a delegated State must notify all affected export port locations and elevator operators, in addition to notifying GIPSA, 72 hours in advance of any intent to discontinue service. They also recommended including language requiring GIPSA to notify Congress within 24 hours of any disruption.

The Reauthorization Act only requires delegated States to notify GIPSA of any intent to discontinue service, while requiring GIPSA to "immediately take such actions as are necessary to address the disruption and resume inspections or weighings" (7 U.S.C. 77(d)(1)). Under such circumstances, it would fall on GIPSA to provide notification to customers. GIPSA declines to include language in the regulations concerning its requirement to notify Congress, as that is already required by the USGSA (7 U.S.C. 77(d)(2)) and inclusion in the regulations is unnecessary.

Additionally, the industry commenters recommended that the reviews of delegated States should start no later than September 30, 2016, and that funding for the reviews be derived solely from appropriated funds. GIPSA intends to conduct formal reviews for each of the five delegated States mirroring the existing process that GIPSA uses to renew the designations of official agencies. GIPSA intends to conduct the first review prior to September 30, 2016, and plans to conduct reviews for every State before certain provisions of the USGSA are set to expire on October 1, 2020. GIPSA finds that the inclusion of language in the regulations concerning the funding of delegation review through appropriated funds to be unnecessary. The USGSA only authorizes user fees to cover the costs incidental to official inspection and weighing and related supervision and administration activities (7 U.S.C. 79(j) and 7 U.S.C. 79a(l)). Appropriated funds are authorized to perform compliance activities (7 U.S.C. 87h), which includes delegation reviews.

Final Action

Based on the above review of comments received in response to 81 FR 3970, GIPSA is amending the regulations of 7 CFR part 800 as outlined in the proposed rule, with exceptions noted in the comment review.

Executive Orders 12866 and 13563 and the Regulatory Flexibility Act

The Office of Management and Budget has designated this rulemaking as not significant under Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulation Review." Since grain export volume can vary significantly from year to year, estimating the impact in any future fee changes can be difficult. GIPSA recognizes the need to provide predictability to the industry for inspection and weighing fees. While not required by the Reauthorization Act, this rulemaking limits the impact of a large annual change in fees by setting an annual cap of 5 percent for increases or decreases in inspection and weighing fees. The statutory requirement to maintain an operating reserve between 3 and 6 months of operating expenses ensures that GIPSA can adequately cover its costs without imposing an undue burden on its customers.

Currently, GIPSA regularly reviews its user-fee financed programs to determine if the fees charged for performing official inspection and weighing services adequately cover the cost of providing those services. This policy remains unchanged in this proposed regulation. GIPSA will continue to seek out cost saving measures and implement appropriate changes to reduce its costs to provide alternatives to fee increases.

This rulemaking is unlikely to have an annual effect of $100 million or more or adversely affect the economy. The changes to the regulation in this rulemaking are a direct response to Congressional action. Also, under the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–12), GIPSA has considered the economic impact of this rulemaking on small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions. This ensures that small businesses will not be unduly or disproportionately burdened. GIPSA is issuing this rulemaking solely because the Reauthorization Act amended the USGSA, which requires that the regulations be updated to reflect the changes made to the USGSA by the Reauthorization Act.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS). This rulemaking affects customers of GIPSA's official inspection and weighing services in the domestic and export grain markets (NAICS code 115114). Fees for that program are in Schedules A (Tables 1–3) and B of section 800.71 of GIPSA's regulations (7 CFR 800.71).

Under the USGSA, all grain exported from the United States must be officially inspected and weighed. GIPSA provides mandatory inspection and weighing services at 45 export facilities in the United States and 7 facilities for U.S. grain transshipped through Canadian ports. Five delegated State agencies provide mandatory inspection and weighing services at 13 facilities. All of these facilities are owned by multinational corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the SBA. Further, the provisions of this rulemaking apply equally to all entities. The USGSA requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those persons who handle, weigh, or transport grain for sale in foreign commerce must also register. The regulations found at 7 CFR 800.30 define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. Currently, there are 108 businesses registered to export grain, most of which are not small businesses.

Most users of the official inspection and weighing services do not meet the SBA requirements for small entities. Further, GIPSA is required by statute to make services available to all applicants and to recover the costs of providing such services as nearly as practicable, while maintaining a 3 to 6 month operating reserve. There are no additional reporting, record keeping, or other compliance requirements imposed upon small entities as a result of this rulemaking. GIPSA has not identified any other federal rules which may duplicate, overlap, or conflict with this rulemaking. Because this rulemaking does not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not provided.

Executive Order 12988

This rulemaking has been reviewed under Executive Order 12988, "Civil Justice Reform." This rulemaking does not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rulemaking. This rulemaking does not have retroactive effect.

Executive Order 13132

This rulemaking has been reviewed under Executive Order 13132, "Federalism." The policies in this rulemaking do not have any substantial direct effect on States, on the relationship between federal government and the States, or on the distribution of power and responsibilities among various levels of government, except as required by law. This rulemaking does not impose substantial direct compliance costs on State and local governments. Because States already retain records for their ordinary operations, § 800.195(g)(4) should not have a significant impact on State governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rulemaking has been reviewed under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." To our knowledge, this rulemaking does not have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, GIPSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rulemaking are not expressly mandated by the Reauthorization Act.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and record keeping requirements included in this rulemaking have been approved by the OMB under control number 0580–0013, which expires on January 31, 2018.

GIPSA is committed to complying with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to maximum extent possible.

E-Government Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Exports, Grains, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, GIPSA amends 7 CFR part 800 as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 2. In § 800.0, in paragraph (b), add in alphabetical order definitions for "Emergency", "Field Office administrative costs", "National program administrative costs", "Operating expenses", and "Operating reserve" to read as follows:

§ 800.0 Meaning of terms.

* * * * *

(b) * * *

Emergency. A situation that is outside the control of the applicant that prevents official inspection or weighing services within 24 hours of the scheduled service time.

* * * * *

Field Office administrative costs. The costs of management, support, and maintenance of a Field Office, including, but not limited to, the management and administrative support personnel, rent, and utilities. This does not include any costs directly related to providing original or review inspection or weighing services.

* * * * *

National program administrative costs. The costs of national management and support of official grain inspection and/or weighing. This does not include the Field Office administrative costs and any costs directly related to providing service.

* * * * *

Operating expenses. The total costs to the Service to provide official grain inspection and/or weighing services.

Operating reserve. The amount of funds the Service has available to provide official grain inspection and/or weighing services.

* * * * *

§ 800.15 [Amended]

■ 3. Amend § 800.15 by removing paragraph (b)(2) and redesignating paragraphs (b)(3) and (4) as (b)(2) and (3), respectively.

■ 4. In § 800.18, revise paragraph (b)(7) to read as follows:

§ 800.18 Waivers of the official inspection and Class X weighing requirements.

* * * * *

(b) * * *

(7) *Emergency waiver.* (i) Upon request, the requirements for official inspection or Class X weighing will be waived whenever the Service determines that an emergency exists that precludes official inspection or Class X weighing;

(ii) To qualify for an emergency waiver, the exporter or elevator operator must submit a timely written request to the Service for the emergency waiver and also comply with all conditions that the Service may require.

* * * * *

■ 5. Revise § 800.71 to read as follows:

§ 800.71 Fees assessed by the Service.

(a) *Official inspection and weighing services.* The fees shown in Schedule A of paragraph (a)(1) of this section apply to official inspection and weighing services performed by FGIS in the U.S. and Canada. The fees shown in Schedule B of paragraph (a)(2) of this section apply to official domestic inspection and weighing services performed by delegated States and designated agencies, including land carrier shipments to Canada and Mexico. The fees charged to delegated States by the Service are set forth in the State's Delegation of Authority document. Failure of a delegated State or designated agency to pay the appropriate fees to the Service within 30 days after becoming due will result in an automatic termination of the delegation or designation. The delegation or designation may be reinstated by the Service if fees that are due, plus interest and any further expenses incurred by the Service because of the termination, are paid within 60 days of the termination.

(1) *Schedule A—Fees for official inspection and weighing services performed in the United States and Canada, effective October 1, 2015.* Canada fees include the noncontract hourly rate, the Toledo Field Office tonnage fee, and the actual cost of travel.

TABLE 1 OF SCHEDULE A—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime [2]	Holidays
(i) Inspection and Weighing Services Hourly Rates (per service representative):				
1-year contract ($ per hour)	$40.20	$42.10	$48.20	$71.40
Noncontract ($ per hour)	71.40	71.40	71.40	71.40
(ii) Additional Tests (cost per test, assessed in addition to the hourly rate): [3]				
(A) Aflatoxin (rapid test kit method)				11.40
(B) Aflatoxin (rapid test kit method-applicant provides kit) [4]				9.40
(C) All other Mycotoxins (rapid test kit method)				20.80
(D) All other Mycotoxins (rapid test kit method-applicant provides kit) [4]				18.80
(E) NIR or NMR Analysis (protein, oil, starch, etc.)				2.70
(F) Waxy corn (per test)				2.70
(G) Fees for other tests not listed above will be based on the lowest noncontract hourly rate				
(H) Other services				
(*1*) Class Y Weighing (per carrier):				
(*i*) Truck/container				0.70
(*ii*) Railcar				1.70
(*iii*) Barge				3.00
(iii) Tonnage Fee (assessed in addition to all other applicable fees, only one tonnage fee will be assessed when inspection and weighing services are performed on the same carrier):				
(A) All outbound carriers serviced by the specific Field Office (per-metric ton):				
(*1*) League City				0.192
(*2*) New Orleans				0.094
(*3*) Portland				0.191
(*4*) Toledo				0.306
(*5*) Delegated States [5]				0.061
(*6*) Designated Agencies [5]				0.061

[1] Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and re-inspection services will be assessed the same fee as the original inspection service.

[4] Applicant must provide the test kit, instrument hardware, calibration control, and all supplies required by the test kit manufacturer.

[5] Tonnage fee is assessed on export grain inspected and/or weighed, excluding land carrier shipments to Canada and Mexico.

TABLE 2 OF SCHEDULE A—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY[1][2]

(i) Original Inspection and Weighing (Class X) Services:	
(A) Sampling only (use hourly rates from Table 1 of this section)	
(B) Stationary lots (sampling, grade/factor, & checkloading):	
(*1*) Truck/trailer/container (per carrier)	$22.50
(*2*) Railcar (per carrier)	33.30
(*3*) Barge (per carrier)	209.10
(*4*) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.08
(C) Lots sampled online during loading (sampling charge under (1)(i) of this table, plus):	
(*1*) Truck/trailer container (per carrier)	13.50
(*2*) Railcar (per carrier)	28.10
(*3*) Barge (per carrier)	143.00
(*4*) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.08
(D) Other services:	
(*1*) Submitted sample (per sample—grade and factor)	13.50
(*2*) Warehouseman inspection (per sample)	23.60
(*3*) Factor only (per factor—maximum 2 factors)	6.60
(*4*) Checkloading/condition examination (use hourly rates from Table 1 of this section, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.08
(*5*) Re-inspection (grade and factor only. Sampling service additional, item (1)(i) of this table)	14.60
(*6*) Class X Weighing (per hour per service representative)	71.40
(E) Additional tests (excludes sampling):	
(*1*) Aflatoxin (rapid test kit method)	33.60
(*2*) Aflatoxin (rapid test kit method—applicant provides kit)[3]	31.60
(*3*) All other Mycotoxins (rapid test kit method)	43.20
(*4*) All other Mycotoxins (rapid test kit method—applicant provides kit)[3]	41.20
(*5*) NIR or NMR Analysis (protein, oil, starch, etc.)	11.40
(*6*) Waxy corn (per test)	11.40
(*7*) Canola (per test-00 dip test)	11.40
(*8*) Pesticide Residue Testing:[4]	
(*i*) Routine Compounds (per sample)	240.90
(*ii*) Special Compounds (Subject to availability)	128.40
(*9*) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1 of this section.	
(ii) Appeal inspection and review of weighing service[5]	
(A) Board Appeals and Appeals (grade and factor)	91.50
(*1*) Factor only (per factor—max 2 factors)	48.20
(*2*) Sampling service for Appeals additional (hourly rates from Table 1 of this section).	
(B) Additional tests (assessed in addition to all other applicable tests):	
(*1*) Aflatoxin (rapid test kit method)	33.60
(*2*) Aflatoxin (rapid test kit method—applicant provides kit)[3]	31.60
(*3*) All other Mycotoxins (rapid test kit method)	52.60
(*4*) All other Mycotoxins (rapid test kit method—applicant provides kit)[3]	50.60
(*5*) NIR or NMR Analysis (protein, oil, starch, etc.)	19.80
(*6*) Sunflower oil (per test)	19.80
(*7*) Mycotoxin (per test-HPLC)	157.30
(*8*) Pesticide Residue Testing:[4]	
(*i*) Routine Compounds (per sample)	240.90
(*ii*) Special Compounds (Subject to availability)	128.40
(*9*) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1 of this section.	
(C) Review of weighing (per hour per service representative)	92.30
(iii) Stowage examination (service-on-request):[4]	
(A) Ship (per stowage space) (minimum $285.00 per ship)	57.00
(B) Subsequent ship examinations (same as original) (minimum $171.00 per ship)	57.00
(C) Barge (per examination)	45.80
(D) All other carriers (per examination)	18.00

[1] Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(b).

[3] Applicant must provide the test kit, instrument hardware, calibration control, and all supplies required by the test kit manufacturer.

[4] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[5] If, at the request of the Service, a file sample is located and forwarded by the Agency, the Agency may, upon request, be reimbursed at the rate of $3.50 per sample by the Service.

TABLE 3 OF SCHEDULE A—MISCELLANEOUS SERVICES[1]

(i) Grain grading seminars (per hour per service representative)[2]	$71.40
(ii) Certification of diverter-type mechanical samplers (per hour per service representative)[2]	71.40
(iii) Special weighing services (per hour per service representative):[2]	
(A) Scale testing and certification	92.90

TABLE 3 OF SCHEDULE A—MISCELLANEOUS SERVICES [1]—Continued

(B) Scale testing and certification of railroad track scales	92.90
(C) Evaluation of weighing and material handling systems	92.90
(D) NTEP Prototype evaluation (other than Railroad Track Scales)	92.90
(E) NTEP Prototype evaluation of Railroad Track Scale	92.90
(F) Use of GIPSA railroad track scale test equipment per facility for each requested service. (Track scales tested under the Association of American Railroads agreement are exempt.)	557.30
(G) Mass standards calibration and re-verification	92.90
(H) Special projects	92.90
(iv) Foreign travel (hourly fee) [3]	92.90
(v) Online customized data service:	
(A) One data file per week for 1 year	557.30
(B) One data file per month for 1 year	334.40
(vi) Samples provided to interested parties (per sample)	3.50
(vii) Divided-lot certificates (per certificate)	2.20
(viii) Extra copies of certificates (per certificate)	2.20
(ix) Faxing (per page)	2.20
(x) Special mailing	Actual Cost.
(xi) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1).	

[1] Any requested service that is not listed will be performed at $71.40 per hour.

[2] Regular business hours—Monday through Friday—service provided at other than regular business hours will be charged at 11/2 times the applicable hourly rate. (See the definition of "business day" in § 800.0(b))

[3] Foreign travel charged hourly fee of $92.90 plus travel, per diem, and related expenditures.

(2) *Schedule B—Fees for FGIS Supervision of Official Inspection and Weighing Services Performed by Delegated States and/or Designated Agencies in the United States.* The supervision fee charged by the Service is $0.011 per metric ton of domestic U.S. grain shipments inspected and/or weighed, including land carrier shipments to Canada and Mexico.

(b) *Annual review of fees.* For each calendar year, starting with 2017, the Service will review the fees in Schedule A in paragraph (a)(1) of this section and publish fees effective January 1 of each year according to the following:

(1) *Tonnage fees.* Tonnage fees will consist of the national tonnage fee and local tonnage fees and will be calculated and rounded to the nearest $0.001 per metric ton. All outbound grain officially inspected and/or weighed by the Field Offices in New Orleans, League City, Portland, and Toledo will be assessed the national tonnage fee plus the appropriate local tonnage fee. Export grain officially inspected and/or weighed by delegated States and official agencies, excluding land carrier shipments to Canada and Mexico, will be assessed the national tonnage fee only. The fees will be set according to the following:

(i) *National tonnage fee.* The national tonnage fee is the national program administrative costs for the previous fiscal year divided by the average yearly tons of export grain officially inspected and/or weighed by delegated States and designated agencies, excluding land carrier shipments to Canada and Mexico, and outbound grain officially inspected and/or weighed by the Service during the previous 5 fiscal years.

(ii) *Local tonnage fee.* The local tonnage fee is the Field Office administrative costs for the previous fiscal year divided by the average yearly tons of outbound grain officially inspected and/or weighed by the Field Office during the previous 5 fiscal years. The local tonnage fee is calculated individually for each Field Office.

(2) *Operating reserve.* In order to maintain an operating reserve not less than 3 and not more than 6 months, the Service will review the value of the operating reserve at the end of each fiscal year and adjust fees according to the following:

(i) *Less than 4.5 months.* If the operating reserve is less than 4.5 times the monthly operating expenses, the Service will increase all fees in Schedule A in paragraph (a)(1) of this section by 2 percent for each $1,000,000, rounded down, that the operating reserve is less than 4.5 times the monthly operating expense, with a maximum increase of 5 percent annually. Except for fees based on tonnage or hundredweight, all fees will be rounded to the nearest $0.10.

(ii) *Greater than 4.5 months.* If the operating reserve is greater than 4.5 times the monthly operating expenses, the Service will decrease all fees in Schedule A in paragraph (a)(1) of this section by 2 percent for each $1,000,000, rounded down, that the operating reserve is greater than 4.5 times the monthly operating expense, with a maximum decrease of 5 percent annually. Except for fees based on tonnage or hundredweight, all fees will be rounded to the nearest $0.10.

(c) *Periodic review.* The Service will periodically review and adjust all fees in Schedules A and B in paragraphs (a)(1) and (2) of this section, respectively, as necessary to ensure they reflect the true cost of providing and supervising official service. This process will incorporate any fee adjustments from paragraph (b) of this section.

(d) *Miscellaneous fees for other services*—(1) *Registration certificates and renewals.* (i) The nature of your business will determine the fees that your business must pay for registration certificates and renewals:

(A) If you operate a business that buys, handles, weighs, or transports grain for sale in foreign commerce, you must pay $135.00.

(B) If you operate a business that buys, handles, weighs, or transports grain for sale in foreign commerce and you are also in a control relationship (see definition in section 17A(b)(2) of the Act) with respect to a business that buys, handles, weighs, or transports grain for sale in interstate commerce, you must pay $270.00.

(ii) If you request extra copies of registration certificates, you must pay $2.20 for each copy.

(2) *Designation amendments.* If you submit an application to amend a designation, you must pay $75.00.

(3) *Scale testing organizations.* If you submit an application to operate as a scale testing organization, you must pay $250.00.

§ 800.72 [Amended]

■ 6. In § 800.72(b), remove the reference "§ 800.71" from the first sentence and add in its place the reference "§ 800.71(a)(1)."

■ 7. Amend § 800.117 by removing paragraph (b)(2), redesignating paragraph (b)(3) as (b)(2), and adding a new paragraph (b)(3) to read as follows:

§ 800.117 Who shall perform original services.

* * * * *

(b) * * *

(3) *Written agreement.* If the assigned official agency agrees in writing with the adjacent official agency to waive the current geographic area restriction at the request of the applicant for service, the adjacent official agency may provide service at a particular location upon providing written notice to the Service, and the Service determines that the written agreement conforms to the provisions in the Act.

* * * * *

■ 8. In § 800.175, revise paragraph (a) to read as follows:

§ 800.175 Termination of licenses.

(a) *Term of license.* Each license shall terminate in accordance with the termination date shown on the license and as specified in paragraph (b) of this section. The termination date for a license shall be no less than 5 years or more than 6 years after the issuance date for the initial license; thereafter, every 5 years. Upon request of a licensee and for good cause shown, the termination date may be advanced or delayed by the Administrator for a period not to exceed 60 days.

* * * * *

■ 9. In § 800.195, add paragraphs (f)(11) and (g)(4) to read as follows:

§ 800.195 Delegations.

* * * * *

(f) * * *

(11) *Notification to Secretary.* A delegated State shall notify the Secretary of its intention to temporarily discontinue official inspection and/or weighing services for any reason, except in the case of a major disaster. The delegated State must provide written notification to the Service no less than 72 hours in advance of the discontinuation date.

* * * * *

(g) * * *

(4) *Review.* At least once every 5 years, a delegated State shall submit to a review of its delegation by the Service in accordance with the criteria and procedures for delegation prescribed in section 7(e) of the Act, this section of the regulations, and the instructions. The Administrator may revoke the delegation of a State according to this subsection if the State fails to meet or comply with any of the criteria for delegation set forth in the Act, regulations, and instructions.

* * * * *

■ 10. In § 800.196, revise paragraphs (e)(2)(ii) and (iii), add paragraph (e)(2)(iv), and revise paragraph (h)(1)(i) to read as follows:

§ 800.196 Designations.

* * * * *

(e) * * *

(2) * * *

(ii) The applicant meets the conditions and criteria specified in the Act and regulations;

(iii) The applicant is better able than any other applicant to provide official services; and

(iv) The applicant addresses concerns identified during consultations that the Service conducts with applicants for service to the satisfaction of the Service.

* * * * *

(h) *Termination and renewal*—(1) *Every 5 years*—(i) *Termination.* A designation shall terminate at a time specified by the Administrator, but not later than 5 years after the effective date of the designation. A notice of termination shall be issued by the Service to a designated agency at least 120 calendar days in advance of the termination date. The notice shall provide instructions for requesting renewal of the designation. Failure to receive a notice from the Service shall not exempt a designated agency from the responsibility of having its designation renewed on or before the specified termination date.

* * * * *

■ 11. In § 800.216, revise paragraph (c) to read as follows:

§ 800.216 Activities that shall be monitored.

* * * * *

(c) *Grain handling activities.* Grain handling activities subject to monitoring for compliance with the Act include, but are not limited to:

(1) Shipping export grain without inspection or weighing;

(2) Violating any Federal law with respect to the handling, weighing, or inspection of grain;

(3) Deceptively loading, handling, weighing, or sampling grain; and

(4) Exporting grain without a certificate of registration.

* * * * *

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–17762 Filed 7–28–16; 8:45 am]

BILLING CODE 3410–KD–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 26, 32, 40, 50, 53, 73, 74, and 150

[NRC–1999–0002, NRC–2001–0012, NRC–2002–0013, NRC–2006–0008, NRC–2008–0200, NRC–2009–0227, and NRC–2009–0079]

RIN 3150–AH18; 3150–AG89; 3150–AG64; 3150–AH81; 3150–AI29; 3150–AI68; 3150–AI50

Rulemaking Activities Being Discontinued by the NRC

AGENCY: Nuclear Regulatory Commission.

ACTION: Rulemaking activities; discontinuation.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is discontinuing eight rulemaking activities. The purpose of this action is to inform members of the public that these rulemaking activities are being discontinued and to provide a brief discussion of the NRC's decision to discontinue them. These rulemaking activities will no longer be reported in the NRC's portion of the Unified Agenda of Regulatory and Deregulatory Actions (the Unified Agenda).

DATES: Effective July 29, 2016, the rulemaking activities discussed in this document are discontinued.

ADDRESSES: Please refer to Docket IDs NRC–1999–0002, NRC–2001–0012, NRC–2002–0013, NRC–2006–0008, NRC–2008–0200, NRC–2009–0227, or NRC–2009–0079 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket IDs NRC–1999–0002, NRC–2001–0012, NRC–2002–0013, NRC–2006–0008, NRC–2008–0200, NRC–2009–0227, or NRC–2009–0079. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then

select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Leslie Terry, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1167; email: *Leslie.Terry@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Each year the NRC staff develops the NRC's Common Prioritization of Rulemaking report, which is used to develop rulemaking program budget estimates and to determine the relative priority of rulemaking activities. During the most recent review of ongoing and potential rulemaking activities, the NRC staff identified seven rulemaking activities in various stages of development, which the Commission approved to be discontinued. For transparency, the NRC staff is including in this action an additional eighth activity that the Commission has already provided initial direction to discontinue.

A discussion of the NRC's decision to discontinue these eight rulemaking activities is provided in Sections III through X of this document.

II. Process for Discontinuing Rulemaking Activities

When the NRC staff identifies a rulemaking activity that can be discontinued, they will request, through a Commission paper, approval from the Commission to discontinue it. The Commission provides its decision in an SRM. If the Commission approves discontinuing the rulemaking activity, the NRC will inform the public of the decision to discontinue it.

A rulemaking activity may be discontinued at any stage in the rulemaking process. For a rulemaking activity that has received public comments, the NRC will consider those comments before discontinuing the rulemaking activity; however, the NRC will not provide individual comment responses.

After Commission approval to discontinue the rulemaking activity, in the next edition of the Unified Agenda, the NRC will update the entry for the rulemaking activity to indicate that it is no longer being pursued. The rulemaking activity will appear in the completed section of that edition of the Unified Agenda but will not appear in future editions.

III. Controlling the Disposition of Solid Materials (RIN 3150–AH18; NRC–1999–0002)

The NRC began an enhanced participatory process to evaluate alternative courses of action for control of solid materials at NRC-licensed facilities that have very low amounts of, or no amount of, radioactivity. As part of this process, the NRC published an Issues Paper in the **Federal Register** on June 30, 1999 (64 FR 35090), requesting public comment on various alternatives. The NRC also held a series of public meetings during the fall of 1999. The Issues Paper described the following process alternatives: (1) Continue the current NRC practice of case-by-case consideration of licensee requests for release of solid material and consider updating existing guidance; or (2) conduct a rulemaking to establish criteria for control of solid materials. The Issues Paper indicated that a rulemaking could have three technical approaches: (1) Permit release of solid materials for unrestricted use if the potential dose to the public from this use is less than a specified level determined during the rulemaking process; (2) restrict release of solid materials to only certain authorized uses; or (3) do not permit either unrestricted or restricted release of solid materials that have been in an area where radioactive material has been used or stored, and instead require all these materials to go to a licensed low-level waste disposal facility.

The agency received over 900 comment letters containing around 2,379 individual comments on the Issues Paper, in addition to those summarized from the public meeting transcripts. The comments were summarized in NUREG/CR–6682, "Summary and Categorization of Public Comments on Controlling the Disposition of Solid Materials," published in September 2000 (ADAMS Accession No. ML040720691). Comments were received from essentially every stakeholder group, including environmental and citizen's groups, members of the general public, scrap and recycling companies, steel and cement manufacturers, hazardous and solid waste management facilities, U.S. Department of Energy, State agencies, Tribal governments, scientific organizations, international organizations, NRC licensees, and licensee organizations. Most of the comments focused on the specific technical approach or criteria that should be developed and reflected a broad spectrum of viewpoints on the issues related to control of solid materials. The NRC staff considered all the comments received.

The NRC staff submitted a draft proposed rule to the Commission, SECY–05–0054, "Proposed Rule: Radiological Criteria for Controlling the Disposition of Solid Materials," dated March 31, 2005 (ADAMS Package Accession No. ML041550790). The NRC staff proposed this rule to the Commission because the NRC wanted to improve the efficiency and effectiveness of the NRC regulatory process by establishing criteria for the disposition of solid materials in the regulations. This proposed rule would have added radiological criteria for controlling the disposition of solid materials that have no, or very small amounts of, residual radioactivity resulting from licensed operations, and which originate in restricted or impacted areas of NRC-licensed facilities. In the SRM for SECY–05–0054, dated June 1, 2005 (ADAMS Accession No. ML051520185), the Commission disapproved publication of the proposed rule *at that time* [emphasis added] because the NRC was "faced with several high priority and complex tasks, the current approach to review specific cases on an individual basis is fully protective of public health and safety, and the immediate need for this rule has changed due to the shift in timing for reactor decommissioning."

This rulemaking continued to be on hold while the Commission was focused on enhancing security and emergency preparedness and response as well as beginning preparations for new authorizations under the Energy Policy Act of 2005, including new nuclear facility licensing and regulation.

The NRC has decided not to proceed with this rulemaking activity because, even though there has been a recent increase in decommissioning, the current regulatory framework provides for case by case approval of alternate disposal procedures under 10 CFR 20.2002. To date, the NRC has received a limited number of licensee requests per year. The NRC staff is conducting a low-level waste programmatic assessment. As part of this assessment, the NRC staff will conduct a scoping study of various low-level waste issues. If the NRC staff determines a need to pursue rulemaking as a result of this study, then the NRC staff will request Commission approval for the rulemaking.

IV. Entombment Options for Power Reactors (RIN 3150–AG89; NRC–2001–0012)

The NRC published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (66 FR 52551; October 16, 2001) to request public comment on the issues surrounding the feasibility of entombment. The ANPR was published because the NRC was considering an amendment to its regulations that would have clarified the use of entombment for power reactors. The NRC had determined that entombment of power reactors was a technically viable decommissioning alternative and could be accomplished safely. The ANPR also included dose criteria for license termination. The dose criteria given in the ANPR included a provision that would have permitted license termination under restricted and unrestricted release conditions.

The agency received 19 comment letters on the ANPR from States, licensees, the Nuclear Energy Institute, the U.S. Environmental Protection Agency (EPA), the Conference of Radiation Control Program Directors' E–24 Committee, the Southeast Compact Commission, and a private individual. There was no consensus on a preferred option; some commenters supported the entombment option while other commenters did not. In general, comments from the eight utilities and the Nuclear Energy Institute stated that they would like to have entombment available as a decommissioning option; however, none committed to using entombment as a decommissioning process.

The NRC has decided not to proceed with this rulemaking activity because the three decommissioning options, which include entombment for power reactors, are currently being considered within the rulemaking for reactor decommissioning. Specifically, in the SRM for SECY–14–0118, "Request by Duke Energy Florida, Inc., for Exemptions from Certain Emergency Planning Requirements," dated December 30, 2014 (ADAMS Accession No. ML14364A111), the Commission directed the NRC staff to proceed with rulemaking on reactor decommissioning.

V. Transfers of Certain Source Materials by Specific Licensees (RIN 3150–AG64; NRC–2002–0013)

On August 28, 2002 (67 FR 55175), the NRC published a proposed rule in the **Federal Register** that would have required prior NRC approval for transfers of source material derived from licensees' specifically licensed material to ensure that these transfers do not pose a health and safety concern.

The NRC received 25 comments from individuals, industrial groups, environmental organizations, and State and Federal government agencies. A summary of comments and issues raised by commenters includes the following: (1) Proposed release limits were inconsistent with part 20 of title 10 of the *Code of Federal Regulations* (10 CFR); (2) better clarification was needed regarding doses applied to non-disposal transfers; (3) the only technical basis discussed was based on an overly conservative assessment; (4) the proposed rule was inconsistent with the existing exemption in 10 CFR 40.13(a); (5) these transfers could impact public health and safety; (6) the environmental assessment was insufficient and the NRC should develop an environmental impact statement; (7) more information was needed about implementation of the rule; (8) the policy was inconsistent with past documents issued by the Commission on this subject; (9) the rule should also apply to general licensees; (10) there should be a minimum quantity level below which approvals for transfer would not be needed; (11) the number of transfers were underestimated; (12) the NRC underestimated the impact to industry because Agreement State licensees were not included in the regulatory analysis; and (13) differing commenter opinions on whether to include the word "disposes" in the authorized activities in 10 CFR 40.13(a). Several commenters commented on the agency's question on whether the regulations should include new requirements specifically prohibiting intentional dilution. Several commenters were against including new regulations for dilution because they believed that it would potentially lead to additional, unnecessary burdens for industry. Several commenters thought that regulations should be added to prevent intentional dilution for purposes of waste treatment and disposal. Some of these commenters thought that "intentional dilution" needed to be better defined. The NRC staff considered all the comments received.

The NRC has decided not to proceed with this rulemaking activity because the concerns are being considered in other regulatory processes. Specifically, there is ongoing work related to SECY–03–0068, "Interagency Jurisdictional Working Group Evaluating the Regulation of Low-Level Source Material or Materials Containing Less than 0.05 Percent by Weight Concentration Uranium and/or Thorium," dated May 1, 2003 (ADAMS Package Accession No. ML030920468), and recent discussions with the U.S. Environmental Protection Agency that would allow certain low-level wastes to be disposed of in Resource Conservation and Recovery Act (commonly known as RCRA) sites. In addition, the NRC has decided not to proceed with this rulemaking activity because the NRC has, on a case-by-case basis, successfully dealt with the issues this rulemaking activity would have addressed.

VI. Approach to Risk-Informed, Performance-Based Requirements for Nuclear Power Reactors (RIN 3150–AH81; NRC–2006–0008)

On May 4, 2006 (71 FR 26267), the NRC published an ANPR in the **Federal Register** to request public comment on an approach that would have established a comprehensive set of risk-informed and performance-based requirements applicable for all nuclear power reactor technologies as an alternative to current requirements. At the time the ANPR was published, the NRC already had an ongoing effort to revise some specific regulations to make them risk-informed and performance-based. The rulemaking would have used operating experience, lessons learned from the rulemaking activities, and advances in the use of risk-informed technology to focus NRC and industry resources on the most risk-significant aspects of plant operations to better protect public health and safety. The set of new alternative requirements would have been intended primarily for new nuclear power reactors, although they would have been available to existing reactor licensees.

The ANPR included 73 questions about the proposed rulemaking scope and plan. The NRC received 15 comment submittals from the regulated industry, consensus standard committees, private individuals, and a foreign regulatory body. Many of the public comments supported the concept of a risk-informed, performance-based regulatory framework and the development of technology-neutral regulations. Some public comments recommended that it was too soon to develop the proposed framework and that the NRC and the industry needed to pilot the licensing of advanced reactor technology using the current 10 CFR parts 50 and 52 frameworks to identify challenges. Some comments did not support the framework as described in the ANPR because it did not require specific design standards and asserted that it did not adequately employ consensus standards that have been demonstrated as adequate and safe for existing reactors. The NRC staff considered all the comments received.

In SECY–07–0101, "Staff Recommendations Regarding a Risk-Informed and Performance-Based Revision to 10 CFR part 50," dated June 14, 2007 (ADAMS Package Accession No. ML070790253), the NRC staff requested that the Commission defer the rulemaking activity until after the development of the licensing strategy for the Next Generation Nuclear Plant (NGNP) or receipt of an application for design certification or a license for the Pebble Bed Modular Reactor. In the SRM for SECY–07–0101, dated September 10, 2007 (ADAMS Accession No. ML072530501), the Commission approved the NRC staff's recommendation to defer the rulemaking activity. In the same SRM, the Commission approved the NRC staff's proposal to provide a recommendation on initiating a rulemaking 6 months after the development of the licensing strategy for the NGNP was finalized. In 2011, the U.S. Department of Energy decided not to proceed with Phase 2 design activities because of fiscal constraints, competing priorities, projected cost of the prototype, and inability to reach a cost share agreement with the industry. As a result, the NRC no longer has a viable demonstration project to reference. Therefore, the NRC has decided not to proceed with this rulemaking activity or continue to expend resources tracking this rulemaking, which is now 10 years old. The NRC has several initiatives underway that would further risk-inform and performance-base the regulatory framework. Discontinuing this particular rulemaking would not preclude other ongoing or future risk-informed, performance-based initiatives.

The NRC is open to new opportunities to explore a risk-informed, performance-based licensing strategy. In the past 2 years, there has been renewed U.S. industry and Executive Branch interest in advanced non-light water reactors (LWRs). The NRC is working to develop a regulatory process to address the unique aspects of these designs within the current regulatory framework. A new risk-informed, performance-based framework has the potential to address some of these unique aspects assuming that the necessary supporting data is available. Currently the advanced non-LWR designs have not reached a level of maturity that would support development of a regulatory basis for rulemaking.

When supporting data is available, the NRC staff would reevaluate the need for rulemaking.

VII. Expansion of the National Source Tracking System (RIN 3150–AI29; NRC–2008–0200)

On April 11, 2008, the NRC published a proposed rule in the **Federal Register** (73 FR 19749) that would have expanded the current National Source Tracking System (NSTS) to include certain additional sealed sources. This rule would have required licensees to report certain transactions involving these sealed sources to the NSTS; these transactions included the manufacture, transfer, receipt, disassembly, or disposal of the nationally tracked source. Each licensee would have had to provide its initial inventory of nationally tracked sources to the NSTS and annually verify and reconcile the information in the system with the licensee's actual inventory.

The NRC received 19 comment letters from States, licensees, industry organizations, and individuals. Almost all of the comment letters were opposed to expanding the NSTS as proposed for the following reasons: (1) The rule is premature and should be delayed to allow time to refine the burden estimates in the regulatory analysis using actual experience from the current NSTS; (2) the NSTS should be fully operational and successfully tracking currently required sources before the NRC adds additional sources to NSTS; and (3) there needs to be additional justification of the security risks posed by these sources before incurring the additional regulatory burden. The NRC staff considered all the comments received.

Based on public comments, the NRC staff requested the Commission to defer completion of the NSTS final rule (SECY–09–0011, "Deferral of Rulemaking: Expansion of National Source Tracking System (RIN 3150–AI29)," dated January 15, 2009 (ADAMS Accession No. ML083540566)).

On May 11, 2009, a copy of a draft final rule was provided to the Agreement States for review. The Executive Boards of the Organization of Agreement States and the Conference of Radiation Control Program Directors provided comments. The agency received 26 comments from individual states. All of the comments received from the States, except one, opposed the NSTS expansion final rule. Most of the commenters cited a risk that implementing the rule would shift limited personnel resources away from what they believe are more near-term and tangible health and safety aspects of radiation protection.

The Commission was unable to reach a decision on the NRC staff's recommendation to defer the NSTS final rule (SRM for SECY–09–0011, dated May 28, 2009 (ADAMS Accession No. ML091480775)). Instead, the Commission directed the NRC staff to conduct a data and system operations and performance analysis of the NSTS based on system operation with Category 1 and 2 sources and report to the Commission. The NRC staff conducted these analyses and reported to the Commission.

The NRC has decided not to proceed with this rulemaking activity because the existing regulatory basis, draft proposed rule, and final proposed rule are now out of date. This rulemaking was developed and proposed as the NSTS was being developed and deployed in late 2008. Since 2009, the NRC published 10 CFR part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material" (78 FR 16922; March 19, 2013); gained significant experience in the management and operation of the National Source Tracking System (*see http://www.nrc.gov/security/byproduct/ismp/nsts.html*); and deployed two on-line applications to support validation of licenses, the Web-Based Licensing System (*see http://www.nrc.gov/security/byproduct/ismp/wbl.html*) and the License Verification System (*see http://www.nrc.gov/security/byproduct/ismp/lvs.html*). The NRC staff is conducting a program review of 10 CFR part 37, which includes an assessment of whether additional measures are warranted for Category 3 materials. Following completion of the 10 CFR part 37 assessment, if the NRC staff determines that the NSTS should be expanded, then the NRC staff will request Commission approval for the rulemaking. The NRC staff will be reporting to the Commission and the Congress on this review in 2016.

VIII. Sabotage of Nuclear Facilities, Fuel, or Designated Material (RIN 3150–AI68; NRC–2009–0227)

In SECY–12–0066, "Criminal Penalties for the Unauthorized Introduction of Weapons into Facilities Designated by the U.S. Nuclear Regulatory Commission and for Sabotage of Nuclear Facilities or Fuel," dated April 26, 2012 (ADAMS Accession No. ML120200150), the NRC staff recommended, in part, that the Commission defer a decision on whether to proceed with a rulemaking to revise 10 CFR 73.81, "Criminal penalties," to add certain radioactive material or other property to the scope of criminal penalties for sabotage authorized under in Section 236, "Sabotage of Nuclear Facilities or Fuel," of the Atomic Energy Act of 1954, as amended (AEA).

In SECY–12–0066, the NRC staff noted that the NRC had not previously issued regulations to implement the authority of Section 236 of the AEA. Instead, the NRC has viewed the language of this statute as plain enough to enable the U.S. Department of Justice (DOJ) to initiate prosecutions for criminal acts, particularly involving the most significant facilities that the NRC regulates, including nuclear power reactors and fuel cycle facilities. This rulemaking would have allowed the NRC to identify certain radioactive material or other property for inclusion within the scope of Section 236.a(7) of the AEA if the Commission determined that this material or other property was significant to public health and safety or common defense and security. The NRC staff evaluated whether further rulemaking was needed to expand nuclear facilities, nuclear waste, or nuclear fuel covered under the scope of Section 236 of the AEA. The NRC staff evaluated (1) materials in 10 CFR part 73, appendix I, "Category 1 and 2 Radioactive Materials" (material list in appendix A to 10 CFR part 37); (2) production reactor spent nuclear fuel and naval reactor spent nuclear fuel, and (3) source material in the physical form of uranium hexafluoride.

In SECY–12–0066, the NRC staff discussed why these materials were chosen for evaluation and the application of Section 236.a(3) of the AEA. The NRC staff stated that "Including certain radioactive material or other property within the scope of the criminal penalties in Section 236 of the AEA may provide DOJ with additional tools for combating terrorists and other malevolent actors." However, the NRC staff noted that a determination of the list of radionuclides and quantities to use in a subsequent rulemaking would need to be coordinated with NRC activities to implement Recommendation 2 of the 2010 Radiation Source Protection and Security Task Force Report [task force recommendations appear in SECY–11–0169, "U.S. Nuclear Regulatory Commission Implementation Plan for the Radiation Source Protection and Security Task Force Report" (ADAMS Package Accession No. ML113070551)], as well as consideration of ongoing actions related to chemical security. The NRC staff indicated that it could not develop the required regulatory basis for a rulemaking to expand the scope of Section 236 of the AEA to include these materials until these activities are completed. The Commission approved the NRC staff's recommendation in the SRM for SECY–12–0066, dated June 18, 2012 (ADAMS Accession No. ML121700765).

The NRC staff completed the additional activities discussed in SECY–12–0066 and informed the Commission that there was no compelling reason to revise 10 CFR 73.81 to implement the scope authority provided by Section 236 of the AEA to provide criminal sanctions for sabotage of nuclear facilities, nuclear waste, and nuclear fuel or other property.

The NRC has decided not to proceed with this rulemaking activity because the NRC staff has concluded that a rulemaking to modify 10 CFR 73.81 to implement the new authority of Section 236 of the AEA would not serve as an effective deterrent for individuals intent on committing sabotage of nuclear facilities, nuclear waste, or nuclear fuel or other property and is not warranted at this time.

IX. Security-Force Fatigue at Nuclear Facilities (No RIN or NRC Docket ID)

In COMSECY–04–0037, "Fitness-for-Duty Orders to Address Fatigue of Nuclear Facility Security Force Personnel," dated June 21, 2004 (ADAMS Accession No. ML040790094), the NRC staff requested Commission approval to issue security orders concerning fitness-for-duty enhancements to address fatigue concerns for security force personnel at five classes of NRC-licensed facilities: (1) Independent Spent Fuel Storage Installations, (2) Decommissioning Reactors, (3) Category I Fuel Cycle Facilities, (4) Gaseous Diffusion Plants, and (5) the Natural Uranium Conversion Facility. In the SRM for COMSECY–04–0037, dated September 1, 2004 (ADAMS Accession No. ML042450533), the Commission directed the NRC staff to pursue the rulemaking process rather than issuing security orders for those materials facilities and personnel for whom the NRC staff believes fatigue related requirements are necessary.

On June 18, 2014 (FR 79 34641), the NRC published a draft regulatory basis for public comment in the **Federal Register** to support the potential amendments to revise a number of existing security-related regulations relating to physical protection of special nuclear material at NRC-licensed facilities and in transit, as well as the fitness for duty programs for security officers at Category I fuel cycle facilities. The draft regulatory basis encompassed three separate rulemaking efforts: (1) Enhanced Security at Fuel Cycle Facilities, (2) Special Nuclear Material Transportation Security, and (3) Security-Force Fatigue at Category I Fuel Cycle Facilities.

During the public comment period the two Category I fuel cycle licensees proposed an alternative to the Security-Force Fatigue rulemaking. Specifically, the affected licensees proposed adding a fatigue management program for security officers into their security plans. On April 22, 2015 (80 FR 22434), the NRC published the final regulatory basis that explained that the NRC had decided to separate the regulatory basis activities for the Security-Force Fatigue at Category I Fuel Cycle Facilities to allow staff time to explore the alternative to rulemaking proposal.

The NRC has decided not to proceed with the Security-Force Fatigue rulemaking activity because, after reviewing the two licensees' proposed changes to their security plans to manage security officer fatigue, NRC licensing staff considers the proposal a viable option because it will establish fatigue requirements that can be readily inspected and enforced for the two Category I fuel cycle licensees within their security plans.

X. Domestic Licensing of Source Materials—Amendments and Integrated Safety Analysis (RIN 3150–AI50; NRC–2009–0079)

On May 17, 2011 (76 FR 28336), the NRC published a proposed rule in the **Federal Register**, proposing to amend its regulations by adding additional requirements for source material licensees who possess significant quantities of uranium hexafluoride (UF6). The proposed amendments would require these licensees to conduct integrated safety analyses (ISAs) similar to the ISAs performed by 10 CFR part 70 licensees; set possession limits for UF6 for determining licensing authority (NRC or Agreement States); add defined terms; add an additional evaluation criterion for applicants who submit an evaluation in lieu of an emergency plan; require the NRC to perform a backfit analysis under specified circumstances; and make administrative changes to the structure of the regulations. The NRC held a public meeting on February 22, 2008, to discuss the scope of the proposed rulemaking and to seek public input on the proposed threshold quantities for determining when a facility will be regulated by the NRC or an Agreement State.

The agency received nine comment letters addressing multiple issues. Comments on the proposed rule were submitted on behalf of several affected States, by industry representatives, NRC licensees, and an individual. The comments and responses were grouped into eight areas: General, procedural, definitions, performance requirements, jurisdiction/authority, backfitting, reporting, and corrections. Most of the comments were generally opposed to the proposed changes to the regulations. Several comments questioned the cost amounts used in the regulatory analysis. All the commenters opposed the probabilistic risk assessment. The NRC staff considered all the comments received.

The NRC staff submitted a draft final rule to the Commission in SECY–12–0071, "Final Rule: Domestic Licensing of Source Material—Amendments/Integrated Safety Analysis (RIN 3150–A150)," dated May 7, 2012 (ADAMS Accession No. ML12094A344). The draft final rule was revised from the proposed rule based on comments from Agreement States and the public. In the SRM for SECY–12–0071, dated May 3, 2013 (ADAMS Accession No. ML13123A127), the Commission disapproved publication of the draft final rule. The Commission directed the NRC staff to revise the rule and associated guidance to address issues given in the SRM and to resubmit the rule for Commission consideration.

In COMSECY–15–0002, "Termination of Rulemaking to Revise Title 10 of The *Code of Federal Regulations* Part 40, 'Domestic Licensing of Source Material' and Staff Plans to Address Other Items in Staff Requirements Memorandum for SECY–12–0071 (RIN 3150–A150)" (ADAMS Accession No. ML13331A559), the NRC staff proposed termination of this rulemaking. The NRC staff based this recommendation on: (1) Honeywell's existing uranium conversion facility, and the licensed but as yet un-built uranium deconversion facility to be operated by International Isotopes; both already have newly approved ISAs as required by their licenses, (2) the NRC does not anticipate new applications for 10 CFR part 40 uranium conversion or deconversion facilities in the foreseeable future, (3) the hazards at Honeywell's uranium conversion facility and the hazards at International Isotopes planned uranium deconversion facility are facility-specific and sufficiently controlled, (4) the NRC staff's reanalysis of the rule has reduced the priority of the rulemaking, and (5) consideration of the cumulative effects of regulation. The agency plans to develop Interim Staff Guidance related to 10 CFR part 70 facilities. The Commission approved termination of this rulemaking in the SRM for COMSECY–15–0002, dated April 17, 2015 (ADAMS Accession No. ML15107A488).

The NRC staff is including discussion of this decision in this document to inform members of the public.

XI. Conclusion

The NRC is no longer pursuing the eight rulemaking activities for the reasons discussed in this document. In the next edition of the Unified Agenda, the NRC will update the entry for these rulemaking activities with reference to this document to indicate that they are no longer being pursued. These rulemaking activities will appear in the completed section of that edition of the Unified Agenda but will not appear in future editions. Should the NRC determine to pursue anything in these areas in the future, it will inform the public through a new rulemaking entry in the Unified Agenda.

Dated at Rockville, Maryland, this 21st day of July, 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting, Secretary of the Commission.

[FR Doc. 2016–17766 Filed 7–28–16; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2013–BT–TP–0029 and EERE–2011–BT–DET–0072]

RIN 1904–AD44, 1904–AC66, and 1904–AC51

Energy Conservation Program for Consumer Products: Final Coverage Determination; Test Procedures for Miscellaneous Refrigeration Products; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; correction.

SUMMARY: On July 18, 2016, the U.S. Department of Energy published a final rule establishing a final coverage determination and test procedures for miscellaneous refrigeration products. This correction addresses technical errors in the preamble and regulatory text. Neither the errors nor the corrections in this document affects the substance of the rulemaking or any of the conclusions reached in support of the final rule.

DATES: *Effective date:* August 17, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Hagerman, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–4549. Email: *Joseph.Hagerman@ee.doe.gov.*

Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) published a final rule in the **Federal Register** on July 18, 2016 ("the July 18 final rule"), that established a final coverage determination and test procedures for miscellaneous refrigeration products. 81 FR 46767. In that rulemaking, DOE made drafting errors in the preamble and regulatory text. Specifically, DOE inadvertently amended 10 CFR 430.23 to add paragraph (dd) to coolers and combination cooler refrigeration products. That paragraph, however, is already assigned to portable air conditioners. Accordingly, references to paragraph (dd) must be corrected to refer to paragraph (ff). In order to remedy this error, DOE is correcting the preamble on page 46783, section 2., second paragraph where DOE references

10 CFR 430.23(dd). DOE is also correcting amendatory instruction 10.b. on page 46792, and the reference to paragraph (dd) on page 46794. The effective date for this rule is August 17, 2016.

Correction

In final rule FR Doc. 2016–14389, published in the issue of Monday, July 18, 2016, (80 FR 46767), the following corrections are made:

1. On page 46783, first column, second paragraph, 5th line, the existing text "10 CFR 430.23 (dd)" is corrected to read as "10 CFR 430.23 (ff)".

2. On page 46792, third column, amendatory instruction 10.b. is corrected to read as follows:

§ 430.23 [Corrected]

■ 10. * * *

■ b. Adding paragraph (ff).

* * * * *

3. On page 46794, third column, second paragraph, "(dd)" is corrected to read as "(ff)".

Issued in Washington, DC, on July 21, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–17752 Filed 7–28–16; 8:45 am]

BILLING CODE 6450–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending (Regulation Z)

CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 1026 to 1099, revised as of January 1, 2016, on page 749, in supplement I to part 1026, under section 1026.41,the heading *41(e)(5) Consumers in bankruptcy* and paragraphs 1, 2, and 3 are added to read as follows:

Supplement I to Part 1026—Official Interpretation

* * * * *

Section 1026.41 Periodic Statements for Residential Mortgage Loans

* * * * *

41(e)(5) Consumers in bankruptcy.

1. Commencing a case. The requirements of § 1026.41 do not apply once a petition is filed under Title 11 of the United States Code, commencing a case in which the consumer is a debtor.

2. Obligation to resume sending periodic statements. i. With respect to any portion of the mortgage debt that is not discharged, a servicer must resume sending periodic statements in compliance with § 1026.41 within a reasonably prompt time after the next payment due date that follows the earliest of any of three potential outcomes in the consumer's bankruptcy case: the case is dismissed, the case is closed, or the consumer receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328. However, this requirement to resume sending periodic statements does not require a servicer to communicate with a consumer in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. To the extent permitted by such law or court order, a servicer may adapt the requirements of § 1026.41 in any manner believed necessary.

ii. The periodic statement is not required for any portion of the mortgage debt that is discharged under applicable provisions of the U.S. Bankruptcy Code. If the consumer's bankruptcy case is revived—for example if the court reinstates a previously dismissed case, reopens the case, or revokes a discharge—the servicer is again exempt from the requirement in § 1026.41.

3. Joint obligors. When two or more consumers are joint obligors with primary liability on a closed-end consumer credit transaction secured by a dwelling subject to § 1026.41, the exemption in § 1026.41(e)(5) applies if any of the consumers is in bankruptcy. For example, if a husband and wife jointly own a home, and the husband files for bankruptcy, the servicer is exempt from providing periodic statements to both the husband and the wife.

* * * * *

[FR Doc. 2016–18050 Filed 7–28–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–6925; Special Conditions No. 25–623–SC]

Special Conditions: Embraer S.A. Model EMB–545 and EMB–550 Airplanes; Installation of an Airbag System To Limit the Axial Rotation of the Upper Leg on Single- and Multiple-Place Side-Facing Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer S.A. (Embraer) Model EMB–545 and EMB–550 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This feature is an airbag system designed to limit the axial rotation of the upper leg on single-place and multiple-place side-facing seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Embraer on July 29, 2016. We must receive your comments by September 12, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–6925 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/*and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*. including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/*.

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2194; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplanes.

In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On March 26, 2015, Embraer applied for a type design change for their new Model EMB–545 and EMB–550 airplanes. These airplanes, currently approved under type certificate no. TC00062IB, are conventional configurations with low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The EMB–545 is designed for a maximum of 9 passengers and the EMB–550 is designed for a maximum of 12 passengers. Both are equipped with two Honeywell HTF7500–E medium-bypass-ratio turbofan engines mounted on aft-fuselage pylons.

Both airplane models have an interior configuration that includes single- and multiple-place side-facing seats (both seating configurations referred to as side-facing seats) that include an airbag system in the shoulder belt for these seats, per special conditions no. 25–495–SC; and an airbag system to limit the axial rotation of the upper leg (femur).

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Embraer must show that the Model EMB–545 and EMB–550 airplanes meet the applicable provisions of the regulations listed in type certificate no. TC00062IB, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model EMB–545 and EMB–550 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB–545 and EMB–550 airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Model EMB–545 and EMB–550 airplanes will incorporate the following novel or unusual design features:

An airbag system designed to limit the axial rotation of the upper leg on single-place and multiple-place side-facing seats.

Discussion

The FAA has developed a methodology to address all fully side-facing seats (seats positioned in the airplane with the occupant facing 90 degrees to the direction of airplane travel), and documented those requirements in special conditions 25–495–SC specifically for these airplanes, including special conditions for the installation of airbag systems in shoulder belts. Special condition 2(e) of those special conditions contain safety criteria to address the potential for serious upper-leg injuries.

Serious leg injuries, such as femur fracture, can occur in aviation side-facing seats. Such injuries could threaten the occupant's life directly or eliminate the occupant's ability to evacuate the airplane. Limiting upper-leg axial rotation to a conservative limit of 35 degrees (approximately the 50-percentile range of motion) should limit the risk of serious leg injury. Research suggests that the angle of rotation can be determined by observing lower-leg flailing in typical high-speed video of the dynamic tests. Alternately, the anthropomorphic test dummy could be instrumented to directly measure upper-leg axial rotation. This requirement complies with the intent of the § 25.562(a) injury criteria in preventing serious leg injury.

To comply with special condition 2(e) on some seat positions, Embraer proposes to install leg-flail airbags. This airbag is not addressed in special conditions 25–495–SC. Therefore, the FAA must issue new special conditions to address this leg-flail airbag installation. These special conditions are similar to other special conditions previously issued for airbags.

The FAA has issued special conditions in the past for airbag systems on lap belts for some forward-facing seats. These special conditions for the airbag system in the shoulder belt are based on the previous special conditions for airbag systems on lap belts with some changes to address the specific issues of side-facing seats. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding, and must consider the combined effects of all such systems installed.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to Model EMB–545 and EMB–550 airplanes. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer Model EMB–550 and Model–545 series airplanes.

In addition to the requirements of §§ 25.562 and 25.785, and special conditions no. 25–495–SC, the following special conditions are part of the type certification basis for the Embraer Model EMB–545 and EMB–550 series airplanes with leg-flail airbags installed on side-facing seats.

1. For seats with a leg-flail airbag system, the system must deploy and provide protection under crash conditions where it is necessary to prevent serious injury. The means of protection must take into consideration a range of stature from a 2-year-old child to a 95th-percentile male. At some buttock popliteal length and effective seat-bottom depth, the lower legs will not be able to form a 90-degree angle relative to the upper leg; at this point, the lower leg flail would not occur. The leg-flail airbag system must provide a consistent approach to prevention of leg flail throughout that range of occupants whose lower legs can form a 90-degree angle relative to the upper legs when seated upright in the seat. Items that need to be considered include, but are not limited to, the range of occupants' popliteal height, the range of occupants' buttock popliteal length, the design of the seat effective height above the floor, and the effective depth of the seat-bottom cushion.

2. The leg-flail airbag system must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have an active leg-flail airbag system.

3. The leg-flail airbag system must not be susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), and other operating and environmental conditions (vibrations, moisture, etc.) likely to occur in service.

4. Deployment of the leg-flail airbag system must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress.

5. Inadvertent deployment of the leg-flail airbag system, during the most critical part of the flight, must either meet the requirement of § 25.1309(b), or not cause a hazard to the airplane or its occupants.

6. The leg-flail airbag system must not impede rapid egress of occupants from the airplane 10 seconds after airbag deployment.

7. The leg-flail airbag system must be protected from lightning and high-intensity radiated fields (HIRF). The threats to the airplane specified in existing regulations regarding lightning (§ 25.1316) and HIRF (§ 25.1317) are incorporated by reference for the purpose of measuring lightning and HIRF protection.

8. The leg-flail airbag system must function properly after loss of normal airplane electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the leg-flail airbag system does not have to be considered.

9. The leg-flail airbag system must not release hazardous quantities of gas or particulate matter into the cabin.

10. The leg-flail airbag system installation must be protected from the effects of fire such that no hazard to occupants will result.

11. A means must be available to verify the integrity of the leg-flail airbag system's activation system prior to each flight, or the leg-flail airbag system's activation system must reliably operate between inspection intervals. The FAA considers that the loss of the leg-flail airbag system's deployment function alone (*i.e.,* independent of the conditional event that requires the leg-flail airbag system's deployment) is a major-failure condition.

12. The airbag inflatable material may not have an average burn rate of greater than 2.5 inches per minute when tested using the horizontal flammability test defined in part 25, appendix F, part I, paragraph (b)(5).

13. The leg-flail airbag system, once deployed, must not adversely affect the emergency-lighting system (*i.e.,* block floor-proximity lights to the extent that the lights no longer meet their intended function).

Issued in Renton, Washington, on July 21, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–17845 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2016–8246; Special Conditions No. 25–624–SC]

Special Conditions: ATR Model ATR–42–200/–300/–320/–500 and ATR–72–102/–202/–212/–212A Airplanes; Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for ATR Model ATR–42–200/–300/–320/–500 and ATR–72–102/–202/–212/–212A airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is seats with non-traditional, large, non-metallic panels. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on ATR on July 29, 2016. We must receive your comments by September 12, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–8246 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/*and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Shelden, Airframe and Cabin Safety, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2785; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval, and thus delivery, of the affected airplanes.

In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On March 2, 2016, ATR applied for a change to type certificate no. A53EU for the installation of seats constructed of non-traditional, non-metallic materials in the Model ATR–42–200/–300/–320/–500, and ATR–72–102/–202/–212/–212A airplanes.

The Model ATR–42/–72 series airplanes are twin-engine, turbopropeller-powered, transport-category airplanes with maximum passenger capacity up to 74, depending upon airplane model.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, ATR must show that the Model ATR–42–200/–300/–320/–500 and ATR–72–102/–202/–212/–212A airplanes, as changed, continue to meet the applicable provisions of the regulations listed in type certificate no. A53EU, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model ATR–42–200/–300/–320/–500 and ATR–72–102/–202/–212/–212A airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model ATR–42–200/–300/–320/–500 and ATR–72–102/–202/–212/–212A airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Model ATR–42–200/–300/–320/–500 and ATR–72–102/–202/–212/–212A airplanes will incorporate the following novel or unusual design feature:

Passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric.

Discussion

In the early 1980s, the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, the FAA adopted new standards for interior surfaces associated with large surface-area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post- crash-fire survival time. Materials that comply with the standards (*i.e.,* § 25.853, "Compartment interiors" at Amendment 25–61 and Amendment 25–66) extend survival time by approximately 2 minutes over materials that do not comply.

At the time these standards were written, the potential application of the requirements of seat heat release and smoke emission was explored. The seat frame itself was not a concern because it was primarily made of aluminum and only small amounts of non-metallic materials. Research determined that the overall effect on survivability was negligible, whether or not the food trays met the heat-release and smoke-emission requirements. The requirements therefore did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April 16, 1985), and the Final Rule at Amendment 25–61 (51 FR 26206, July

21, 1986), specifically note that seats were excluded "because the recently adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats."

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size: "It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made."

In the late 1990s, the FAA issued Policy Memorandum 97–112–39, "Guidance for Flammability Testing of Seat/Console Installations," October 17, 1997 (*http://rgl.faa.gov*). That memo was issued when it became clear that seat designs were evolving to include large, non-metallic panels with surface areas that would impact survivability during a cabin-fire event, comparable to partitions or galleys. The memo noted that large-surface-area panels must comply with heat-release and smoke-emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin-fire event.

In October of 2004, an issue was raised regarding the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The FAA Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design, and determined that it represented the kind and quantity of material that should be required to pass the heat-release and smoke-emissions requirements. The FAA has determined that special conditions would be issued to apply the standards defined in 14 CFR 25.853(d) to seats with large, non-metallic panels in their design. Traditional seat panels would not be covered by the special conditions.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Model ATR–42–200/–300/–320/–500 and ATR–72–102/–202/–212/–212A airplanes. Should ATR apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well. These special conditions apply to new seat-certification programs. Previously approved seats are not affected by these special conditions.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for ATR Model ATR–42–200/–300/–320/–500 and ATR–72–102/–202/–212/–212A airplanes for new seat-certification programs.

1. Compliance with 14 CFR part 25 Appendix F, parts IV and V, "Heat release and smoke emission," is required for seats that incorporate non-traditional, large, non-metallic panels that may be either a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition 1, above. A triple seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (*e.g.,* outboard seat place, 1 sq. ft.; middle, 1 sq. ft.; and inboard, 2.5 sq. ft.)

3. Seats need not meet the test requirements of 14 CFR part 25 Appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include airplanes:

a. With passenger capacities of 19 or fewer;

b. that do not have smoke-emission and heat-release test requirements in their certification basis, and that are not required by 14 CFR 121.312 to conduct such tests; or

c. that are exempted from smoke-emission and heat-release testing.

Issued in Renton, Washington, on July 21, 2016.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–17846 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3700; Directorate Identifier 2015–NM–171–AD; Amendment 39–18595; AD 2016–15–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 757–200 and –200CB series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the lap splices at stringer S–14R, lower fastener row, are subject to widespread fatigue damage (WFD). This AD requires external dual frequency eddy current (DFEC) or internal high frequency eddy current (HFEC) inspections of the lap splice, inner skin

fasteners, at stringer S–14R, station (STA) 440 through STA 540, and corrective action if necessary. We are issuing this AD to detect and correct cracking of the fuselage skin lap splice. Such cracking could result in reduced structural integrity of the airplane.

DATES: This AD is effective September 2, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 2, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3700.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3700; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 757–200 and –200CB series airplanes. The NPRM published in the **Federal Register** on March 1, 2016 (81 FR 10533) (“the NPRM”). The NPRM was prompted by an evaluation by the DAH indicating that the lap splices at stringer S–14R, lower fastener row, are subject to WFD. The NPRM proposed to require repetitive external DFEC or internal HFEC inspections of the lap splice, inner skin fasteners, at stringer S–14R, STA 440 through STA 540, and corrective action if necessary. We are issuing this AD to detect and correct cracking of the fuselage skin lap splice. Such cracking could result in reduced structural integrity of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA’s response to each comment. Boeing indicated its support for the NPRM.

Request for Updated Service Information

United Airlines generally concurred with the NPRM, but requested that repairs be incorporated into a subsequent revision of Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015. According to United Airlines, the lack of certain approved repairs adds a significant level of burden on the operators.

We acknowledge United Airlines’ comment and concerns. We have been advised that Boeing is working on revising the referenced service information to include repair information, but Boeing cannot provide a fixed date when the next revision will be published. To delay this AD until this service information is available is inappropriate since we have determined that an unsafe condition exists and that inspections must be conducted to ensure continued safety. If the updated service information is approved and published, any operator may request approval of an alternative method of compliance (AMOC) as specified in paragraph (j) of this AD. We may also consider further rulemaking after reviewing any updated service information. We have not changed this AD regarding this issue.

Request To Add Exclusion to the Service Information

United Airlines requested that the note under step 3.B.1. of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015, be changed so that any FAA-approved repair that meets the minimum 3 rows on either side of the lap splice would qualify as exempt from the initial and repeat inspections. United Airlines stated that this change would remove the need to request approval of an AMOC.

The FAA does not make changes to service bulletins. The commenter’s request could be incorporated into the AD, but we do not agree with the requested change because each existing repair affected by this AD needs to be evaluated in accordance with paragraph (g) of this AD. For any repair in the affected area, operators may request approval of an AMOC as specified in paragraph (j) of this AD. We have not changed this AD regarding this issue.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the supplemental type certificate (STC) ST01518SE does not affect the actions specified in the NPRM.

We agree with the commenter. We have redesignated paragraph (c) of the NPRM as (c)(1) and added new paragraph (c)(2) to this final rule to state that installation of STC ST01518SE does not affect the ability to accomplish the actions required by this final rule. Therefore, for airplanes on which STC ST01518SE is installed, a “change in product” AMOC approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Clarification of Service Information Exception

Paragraph (h)(2) of the NPRM describes a standard service information exception; however that exception does not apply to Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015. Therefore, we have removed paragraph (h)(2) of the NPRM from this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015. The service information describes procedures for performing repetitive external DFEC or internal HFEC inspections of the lap splice, inner skin fasteners, at stringer S–14R, STA 440—STA 540, and corrective action if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 572 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Option 1: External DFEC inspection.	4 work-hours × $85 per hour = $340 per inspection cycle.	$0	$340 per inspection cycle	$194,480 per inspection cycle.
Option 2: Internal HFEC inspection.	10 work-hours × $85 per hour = $850 per inspection cycle.	$0	$850 per inspection cycle	$486,200 per inspection cycle.

We have received no definitive data that will enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–15–04 The Boeing Company: Amendment 39–18595; Docket No. FAA–2016–3700; Directorate Identifier 2015–NM–171–AD.

(a) Effective Date

This AD is effective September 2, 2016.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 757–200 and –200CB series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01518SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSTC.nsf/0/38B606833BBD98B386257FAA00602538?OpenDocument&Highlight=st01518se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01518SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder indicating that the lap splices at stringer S–14R, lower fastener row, are subject to widespread fatigue damage. We are issuing this AD to detect and correct cracking of the fuselage skin lap splice. Such cracking could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspections

At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015, except as required by paragraph (h) of this AD: Do an external dual frequency eddy current inspection or internal high frequency eddy current inspection for cracking of the lap splice, inner skin lower fastener row, at stringer S–14R, station (STA) 440 through STA 540, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015. Repeat either inspection thereafter at the time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015.

(h) Service Information Exceptions

Where Boeing Alert Service Bulletin 757–53A0102, dated October 8, 2015, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Repair

If any crack is found during any inspection required by this AD, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (h) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 757-53A0102, dated October 8, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 21, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–17861 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5463; Directorate Identifier 2016–NM–013–AD; Amendment 39–18598; AD 2016–15–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), Model CL–600–2D24 (Regional Jet Series 900), and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by reports of corrosion found on the slat and flap torque tubes in the slat and flap control system. This AD requires replacement of the slat and flap torque tubes in the slat and flap control system. We are issuing this AD to prevent rupture of a corroded slat or flap torque tube. This condition could result in an inoperative slat or flap system and consequent reduced controllability of the airplane.

DATES: This AD is effective September 2, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 2, 2016.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax: 514–855–7401; email: *ac.yul@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5463.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5463; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), Model CL–600–2D24 (Regional Jet Series 900), and Model CL–600–2E25 (Regional Jet Series

1000) airplanes. The NPRM published in the **Federal Register** on April 12, 2016 (81 FR 21503) ("the NPRM"). The NPRM was prompted by reports of corrosion found on the slat and flap torque tubes in the slat and flap control system. The NPRM proposed to require replacement of the slat and flap torque tubes in the slat and flap control system. We are issuing this AD to prevent rupture of a corroded slat or flap torque tube. This condition could result in an inoperative slat or flap system and consequent reduced controllability of the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2016–03R1, dated February 18, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), Model CL–600–2D24 (Regional Jet Series 900), and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> There have been a number of reports of corrosion found on the torque tubes in the slat and flap control system. Investigation revealed that the current design of the flap and slat torque tubes do not have proper corrosion protection and are not entirely sealed which leads to moisture ingress and internal corrosion. A corroded tube may rupture resulting in an inoperative slat or flap system, or in a worst case scenario, could result in reduced controllability of the aeroplane. This [Canadian] AD mandates the replacement of affected slat and flap system torque tubes with [new or] modified torque tubes.
>
> This [Canadian] AD was revised to add the statement that accomplishment of the initial Service Bulletin (SB) 670BA–27–067, dated 15 January 2015 also meets the requirements of this AD and to correct the editorial error for the release date of SB 670BA–27–067, Revision A.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5463.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter supported the NPRM.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 670BA–27–067, Revision A, dated February 23, 2015. This service information describes procedures for replacement of the slat and flap torque tubes in the slat and flap control system. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 509 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement of the slat and flap torque tubes	34 work-hours × $85 per hour = $2,890	$105,000	$107,890	$54,916,010

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–15–07 Bombardier, Inc.: Amendment 39–18598; Docket No. FAA–2016–5463; Directorate Identifier 2016–NM–013–AD.

(a) Effective Date

This AD is effective September 2, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 through 10342 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) airplanes, serial numbers 15001 through 15361 inclusive.

(3) Bombardier, Inc. Model CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 through 15361 inclusive.

(4) Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 through 19041 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of corrosion found on the slat and flap torque tubes in the slat and flap control system. We are issuing this AD to prevent rupture of a corroded slat or flap torque tube. This condition could result in an inoperative slat or flap system and consequent reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replace Slat and Flap Torque Tubes in the Slat and Flap Control System

Within the compliance times specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable: Replace the slat and flap torque tubes in the slat and flap control system with new or modified slat and flap torque tubes, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–067, Revision A, dated February 23, 2015.

(1) For airplanes that have accumulated 28,000 total flight hours or less as of the effective date of this AD, or 137 months or less since the date of issuance of the original Canadian certificate of airworthiness or date of issuance of the original Canadian export certificate of airworthiness as of the effective date of this AD: Before the accumulation of 34,000 total flight hours or within 167 months since the date of issuance of the original Canadian certificate of airworthiness or date of issuance of the original Canadian export certificate of airworthiness, whichever occurs first.

(2) For airplanes that have accumulated more than 28,000 total flight hours but not more than 36,000 total flight hours as of the effective date of this AD, and more than 137 months but not more than 176 months since the date of issuance of the original Canadian certificate of airworthiness or date of issuance of the original Canadian export certificate of airworthiness as of the effective date of this AD: At the earlier of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Within 6,000 flight hours or 30 months, whichever occurs first, after the effective date of this AD.

(ii) Before the accumulation of 38,000 total flight hours, or within 186 months since the date of issuance of the original Canadian certificate of airworthiness or date of issuance of the original Canadian export certificate of airworthiness, whichever occurs first.

(3) For airplanes that have accumulated more than 36,000 total flight hours as of the effective date of this AD, or more than 176 months since the date of issuance of the original Canadian certificate of airworthiness or date of issuance of the original Canadian export certificate of airworthiness as of the effective date of this AD: Within 2,000 flight hours or 10 months, whichever occurs first, after the effective date of this AD.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 670BA–27–067, dated January 15, 2015.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2016–03R1, dated February 18, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5463.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 670BA–27–067, Revision A, dated February 23, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax: 514–855–7401; email: *ac.yul@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on July 21, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–17863 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM15–14–002; Order No. 829]

Revised Critical Infrastructure Protection Reliability Standards

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) directs the North American Electric Reliability Corporation to develop a new or modified Reliability Standard that addresses supply chain risk management for industrial control system hardware, software, and computing and networking services

associated with bulk electric system operations. The new or modified Reliability Standard is intended to mitigate the risk of a cybersecurity incident affecting the reliable operation of the Bulk-Power System.

DATES: This rule is effective September 27, 2016.

FOR FURTHER INFORMATION CONTACT:

Daniel Phillips (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6387, *daniel.phillips@ferc.gov*.

Simon Slobodnik (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6707, *simon.slobodnik@ferc.gov*.

Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6840, *kevin.ryan@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Order No. 829

Final Rule

1. Pursuant to section 215(d)(5) of the Federal Power Act (FPA),[1] the Commission directs the North American Electric Reliability Corporation (NERC) to develop a new or modified Reliability Standard that addresses supply chain risk management for industrial control system hardware, software, and computing and networking services associated with bulk electric system operations. The new or modified Reliability Standard is intended to mitigate the risk of a cybersecurity incident affecting the reliable operation of the Bulk-Power System.

2. The record developed in this proceeding supports our determination under FPA section 215(d)(5) that it is appropriate to direct the creation of mandatory requirements that protect aspects of the supply chain that are within the control of responsible entities and that fall within the scope of our authority under FPA section 215. Specifically, we direct NERC to develop a forward-looking, objective-based Reliability Standard to require each affected entity to develop and implement a plan that includes security controls for supply chain management for industrial control system hardware, software, and services associated with bulk electric system operations.[2] The new or modified Reliability Standard should address the following security objectives, discussed in detail below: (1) Software integrity and authenticity; (2) vendor remote access; (3) information system planning; and (4) vendor risk management and procurement controls. In making this directive, the Commission does not require NERC to impose any specific controls, nor does the Commission require NERC to propose "one-size-fits-all" requirements. The new or modified Reliability Standard should instead require responsible entities to develop a plan to meet the four objectives, or some equally efficient and effective means to meet these objectives, while providing flexibility to responsible entities as to how to meet those objectives.

I. Background

A. Section 215 and Mandatory Reliability Standards

3. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[3] Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO,[4] and subsequently certified NERC.[5]

B. Notice of Proposed Rulemaking

4. The NOPR, *inter alia*, identified as a reliability concern the potential risks to bulk electric system reliability posed by the "supply chain" (*i.e.*, the sequence of processes involved in the production and distribution of, *inter alia*, industrial control system hardware, software, and services). The NOPR explained that changes in the bulk electric system cyber threat landscape, exemplified by recent malware campaigns targeting supply chain vendors, have highlighted a gap in the Critical Infrastructure Protection (CIP) Reliability Standards.[6] To address this gap, the NOPR proposed to direct that NERC develop a forward-looking, objective-driven Reliability Standard that provides security controls for supply chain management for industrial control system hardware, software, and services associated with bulk electric system operations.[7]

5. Recognizing that developing supply chain management requirements would likely be a significant undertaking and require extensive engagement with stakeholders to define the scope, content, and timing of the Reliability Standard, the Commission sought comment on: (1) the general proposal to direct that NERC develop a Reliability Standard to address supply chain management; (2) the anticipated features of, and requirements that should be included in, such a standard; and (3) a reasonable timeframe for development of a Reliability Standard.[8]

6. In response to the NOPR, thirty-four entities submitted comments on the NOPR proposal regarding supply chain risk management. A list of these commenters appears in Appendix A.

C. January 28, 2016 Technical Conference

7. On January 28, 2016, Commission staff led a Technical Conference to facilitate a dialogue on supply chain risk management issues that were identified by the Commission in the NOPR. The January 28 Technical Conference addressed: (1) The need for a new or modified Reliability Standard; (2) the scope and implementation of a new or modified Reliability Standard; and (3) current supply chain risk management practices and collaborative efforts.

8. Twenty-four entities representing industry, government, vendors, and academia participated in the January 28 Technical Conference through written comments and/or presentations.[9]

9. We address below the comments submitted in response to the NOPR and comments made as part of the January 28 Technical Conference.

II. Discussion

10. Pursuant to section 215(d)(5) of the FPA, the Commission determines that it is appropriate to direct NERC to develop a new or modified Reliability Standard(s) that address supply chain risk management for industrial control system hardware, software, and computing and networking services associated with bulk electric system

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[1] 16 U.S.C. 824o(d)(5).

[2] *Revised Critical Infrastructure Protection Reliability Standards*, Notice of Proposed Rulemaking, 80 FR 43,354 (Jul. 22, 2015), 152 FERC ¶ 61,054, at P 66 (2015) (NOPR).

[3] 16 U.S.C. 824o(e).

[4] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[5] *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g and compliance*, 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

[6] NOPR, 152 FERC ¶ 61,054 at P 63.

[7] *Id.* P 66.

[8] *Id.*

[9] Written presentations at the January 28, 2016 Technical Conference and the Technical Conference transcript referenced in this Final Rule are accessible through the Commission's eLibrary document retrieval system in Docket No. RM15–14–000.

operations.[10] Based on the comments received in response to the NOPR and at the technical conference, we determine that the record in this proceeding supports the development of mandatory requirements for the protection of aspects of the supply chain that are within the control of responsible entities and that fall within the scope of our authority under FPA section 215.

11. In its NOPR comments, NERC acknowledges that "supply chains for information and communications technology and industrial control systems present significant risks to [Bulk-Power System] security, providing various opportunities for adversaries to initiate cyberattacks." [11] Several other commenters also recognized the risks posed to the bulk electric system by supply chain security issues and generally support, or at least do not oppose, Commission action to address the reliability gap.[12] For example, in prepared remarks submitted for the January 28 Technical Conference, one panelist noted that attacks targeting the supply chain are on the rise, particularly attacks involving third party service providers.[13] In addition, it was noted that, while many responsible entities are already independently assessing supply chain risks and asking vendors to address the risks, these individual efforts are likely to be less effective than a mandatory Reliability Standard.[14]

12. We recognize, however, that most commenters oppose development of Reliability Standards addressing supply chain management for various reasons. These commenters contend that Commission action on supply chain risk management would, among other things, address or influence activities beyond the scope of the Commission's FPA section 215 jurisdiction.[15] Commenters also assert that the existing CIP Reliability Standards adequately address potential risks to the bulk electric system from supply chain issues.[16] In addition, commenters claim that responsible entities have minimal control over their suppliers and are not able to identify all potential vulnerabilities associated with each of their products or parts; therefore, even if a responsible entity identifies a vulnerability created by a supplier, the responsible entity does not necessarily have any authority, influence or means to require the supplier to apply mitigation.[17] Other commenters argue that the Commission's proposal may unintentionally inhibit innovation.[18] A number of commenters assert that voluntary guidelines would be more effective at addressing the Commission's concerns.[19] Finally, commenters are concerned that the contractual flexibility necessary to effectively address supply chain concerns does not fit well with a mandatory Reliability Standard.[20]

13. As discussed below, we conclude that our directive falls within the Commission's authority under FPA section 215. We also determine that, notwithstanding the concerns raised by commenters opposed to the NOPR proposal, it is appropriate to direct the development of mandatory requirements to protect industrial control system hardware, software, and computing and networking services associated with bulk electric system operations. Many of the commenters' concerns are addressed by the flexibility inherent in our directive to develop a forward-looking, objective-based Reliability Standard that includes specific security objectives that a responsible entity must achieve, but affords flexibility in how to meet these objectives. The Commission does not require NERC to impose any specific controls nor does the Commission require NERC to propose "one-size-fits-all" requirements. The new or modified Reliability Standard should instead require responsible entities to develop a plan to meet the four objectives, or some equally efficient and effective means to meet these objectives, while providing flexibility to responsible entities as to how to meet those objectives. Moreover, our directive comports well with the NOPR comments submitted by NERC, in which NERC explained what it believes would be the features of a workable supply chain management Reliability Standard.[21]

14. We address below the following issues raised in the NOPR, NOPR comments, and January 28 Technical Conference comments: (1) the Commission's authority to direct the ERO to develop supply chain management Reliability Standards under FPA section 215(d)(5); and (2) the need for supply chain management Reliability Standards, including the risks posed by the supply chain, objectives of a supply chain management Reliability Standard, existing CIP Reliability Standards, and responsible entities' ability to affect the supply chain.

A. Commission Authority To Direct the ERO To Develop Supply Chain Management Reliability Standards Under FPA Section 215(d)(5)

NOPR

15. In the NOPR, the Commission stated that it anticipates that a Reliability Standard addressing supply chain management security would, *inter alia,* respect FPA Section 215 jurisdiction by only addressing the obligations of responsible entities and not directly imposing obligations on suppliers, vendors, or other entities that provide products or services to responsible entities.[22]

Comments

16. Commenters contend that the Commission's proposal to direct NERC to develop mandatory Reliability Standards to address supply chain risks could exceed the Commission's

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[10] 16 U.S.C. 824o(d)(5) ("The Commission . . . may order the [ERO] to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses as specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.").

[11] NERC NOPR Comments at 8.

[12] *See* Peak NOPR Comments at 3–6; ITC NOPR Comments at 13–15; CyberArk NOPR Comments at 4; Ericsson NOPR Comments at 2; Isologic and Resilient Societies Joint NOPR Comments at 9–12; ACS NOPR Comments at 4; ISO NE NOPR Comments at 2–3; NEMA NOPR Comments at 1–2.

[13] Olcott Technical Conference Comments at 1–2.

[14] Galloway Technical Conference Comments at 1 (". . . ISO–NE supports the Commission's proposal to direct NERC to develop requirements relating to supply chain risk management. We believe that the risks to the reliability of the Bulk Electric System that result from compromised third-party software are real, significant and largely unaddressed by existing reliability standards. While many public utilities are already assessing these risks and asking vendors to address them, these one-off efforts are far less likely to be effective than an industry-wide reliability standard.").

[15] *See* Trade Associations NOPR Comments at 24; Southern NOPR Comments at 14–16; CEA NOPR Comments at 4–5; NIPSCO NOPR Comments at 7.

[16] *See* Trade Associations NOPR Comments at 20–25; Gridwise NOPR Comments at 3; Arkansas NOPR Comments at 6; G&T Cooperatives NOPR Comments at 8–9; NEI NOPR Comments at 3–5; NIPSCO NOPR Comments at 5–6; Luminant NOPR Comments at 4–5; SCE NOPR Comments at 4.

[17] *See* Arkansas NOPR Comments at 5–6; G&T Cooperatives NOPR Comments at 9; Trade Associations NOPR Comments at 25.

[18] *See* Arkansas NOPR Comments at 6; G&T Cooperatives NOPR Comments at 9; NERC NOPR Comments at 13.

[19] *See* Trade Associations NOPR Comments at 23; Southern NOPR Comments at 13; AEP NOPR Comments at 5; NextEra NOPR Comments at 4–5; Luminant NOPR Comments at 5.

[20] *See* Arkansas NOPR Comments at 6; Southern NOPR Comments at 13.

[21] NERC NOPR Comments at 8–9. The record evidence on which the directive in this Final Rule is based is either comparable or superior to past instances in which the Commission has directed, pursuant to FPA section 215(d)(5), that NERC propose a Reliability Standard to address a gap in existing Reliability Standards. *See, e.g., Reliability Standards for Physical Security Measures,* 146 FERC ¶ 61,166 (2014) (directing, without seeking comment, that NERC develop proposed Reliability Standards to protect against physical security risks related to the Bulk-Power System).

[22] NOPR, 152 FERC ¶ 61,054 at P 66.

jurisdiction under FPA section 215. The Trade Associations state that the NOPR discussion "appears to suggest a new mandate, over and above Section 215 for energy security, integrity, quality, and supply chain resilience, and the future acquisition of products and services." [23] The Trade Associations assert that the Commission's NOPR proposal does not provide any reasoning that connects energy security and integrity with reliable operations for Bulk-Power System reliability. The Trade Associations seek clarification that the Commission does not intend to define energy security as a new policy mandate.[24]

17. Southern states that it agrees with the Trade Associations that expanding the focus of the NERC Reliability Standards "to include concepts such as security, integrity, and supply chain resilience is beyond the statutory authority granted in Section 215." [25] Southern contends that while these areas "have an impact on the reliable operation of the bulk power system, [. . .] they are areas that are beyond the scope of [the Commission's] jurisdiction under Section 215." [26] NIPSCO raises a similar argument, stating that the existing CIP Reliability Standards should address the Commission's concerns "without involving processes and industries outside of the Commission's jurisdiction under section 215 of the Federal Power Act." [27]

18. Southern questions how a mandatory Reliability Standard that achieves all of the objectives specified in the NOPR "could effectively address [the Commission's] concerns and still stay within the bounds of [the Commission's] scope and mission under Section 215." [28] Southern asserts that "a reading of Section 215 indicates that [the Commission's] mission and authority under Section 215 is focused on the *operation* of the bulk power system elements, not on the acquisition of those elements and associated procurement practices." [29] In support of its assertion, Southern points to the definition in FPA section 215 of "reliability standard," noting the use and meaning of the terms "reliable operation" and "operation." Southern contends that "Section 215 standards should ensure that a given BES Cyber System asset is protected from vulnerabilities once connected to the BES, and should not be concerned about how the Responsible Entity works with its vendors and suppliers to ensure such reliability (such as higher financial incentives or greater contractual penalties)." [30]

19. The Trade Associations and Southern also observe that, while the NOPR indicates that the Commission has no direct oversight authority over third-party suppliers or vendors and cannot indirectly assert authority over them through jurisdictional entities, the NOPR proposal appears to assert that authority.[31] The Trade Associations maintain that such an extension of the Commission's authority would be unlawful and, therefore, seek clarification that "the Commission will avoid seeking to extend its authority since such an extension would set a troubling precedent." [32] CEA raises a concern that the NOPR proposal "appears to lend itself to the interpretation that authority is indirectly being asserted over non-jurisdictional entities." [33]

20. The Trade Associations also maintain that the Commission's use of the term "industrial control system" in the scope of its proposal suggests that the Commission is seeking to address issues beyond CIP and cybersecurity-related issues. The Trade Associations seek clarification that the Commission does not intend for NERC broadly to address industrial control systems, such as fuel procurement and delivery systems or system protection devices, but intends for its proposal to be limited to CIP and cybersecurity-related issues.[34]

Discussion

21. We are satisfied that FPA section 215 provides the Commission with the authority to direct NERC to address the reliability gap concerning supply chain management risks identified in the NOPR. We reject the contention that our directive could be read to address issues outside of the Commission's FPA section 215 jurisdiction. However, to be clear, we reiterate the statement in the NOPR that any action taken by NERC in response to the Commission's directive to address the supply chain-related reliability gap should respect "section 215 jurisdiction by only addressing the obligations of responsible entities" and "not directly impose obligations on suppliers, vendors or other entities that provide products or services to responsible entities." [35] The Commission expects that NERC will adhere to this instruction as it works with stakeholders to develop a new or modified Reliability Standard to address the Commission's directive. As discussed below, we reject the remaining comments regarding the Commission's authority to direct the development of supply chain management Reliability Standards under FPA section 215(d)(5).

22. Our directive does not suggest, as the Trade Associations contend, a new mandate above and beyond FPA section 215. The Commission's directive to NERC to address supply chain risk management for industrial control system hardware, software, and computing and networking services associated with bulk electric system operations is not intended to "define 'energy security' as a new policy mandate" under the CIP Reliability Standards.[36] Instead, our directive is meant to enhance bulk electric system cybersecurity by addressing the gap in the CIP Reliability Standards identified in the NOPR relating to supply chain risk management for industrial control system hardware, software, and computing and networking services associated with bulk electric system operations. This directive is squarely within the statutory definition of a "reliability standard," which includes requirements for "cybersecurity protection." [37]

23. We reject Southern's argument that FPA section 215 limits the scope of the NERC Reliability Standards to "ensur[ing] that a given BES Cyber System asset is protected from vulnerabilities once connected" to the bulk electric system.[38] While Southern's comment implies that the Commission should only be concerned with real-time operations based on the definition of the term "reliable operation," the definition of "reliability standard" in FPA section 215 also includes requirements for "the design of planned additions or modifications" to bulk electric system facilities "necessary to provide for reliable operation of the bulk-power

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[23] Trade Associations NOPR Comments at 24.

[24] *Id.*

[25] Southern NOPR Comments at 16.

[26] Southern NOPR Comments at 16; *see also* Trade Association NOPR Comments at 24.

[27] NIPSCO NOPR Comments at 7.

[28] Southern NOPR Comments at 14–15.

[29] *Id.* at 15 (emphasis in original).

[30] *Id.* at 16.

[31] Trade Associations NOPR Comments at 24–25; Southern NOPR Comments at 17; *see also* Trade Associations Post-Technical Conference Comments at 20–21.

[32] Trade Associations NOPR Comments at 24–25.

[33] CEA NOPR Comments at 5.

[34] Trade Associations NOPR Comments at 25.

[35] NOPR, 152 FERC ¶ 61,054 at P 66.

[36] *See* Trade Associations NOPR Comments at 24.

[37] *See* 16 U.S.C. 824o(a)(3) (defining "reliability standard" to mean "a requirement, approved by the Commission under [section 215 of the FPA] to provide for the reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities, *including cybersecurity protection*, and *the design of planned additions or modifications to such facilities* to the extent necessary to provide for reliable operation . . .") (emphasis added).

[38] *See* Southern NOPR Comments at 16.

system." [39] Moreover, as noted, FPA section 215 is clear that maintaining reliable operation also includes protecting the bulk electric system from cybersecurity incidents.[40] Indeed, our findings and directives in the Final Rule are intended to better protect the Bulk-Power System from potential cybersecurity incidents that could adversely affect reliable operation of the Bulk-Power System. Accordingly, we would not be carrying out our obligations under FPA section 215 if the Commission determined that cybersecurity incidents resulting from gaps in supply chain risk management were outside the scope of FPA section 215.

24. With regard to concerns that the NOPR's use of the term "industrial control system" signals the Commission's intent to address issues beyond the CIP Reliability Standards or cybersecurity controls, we clarify that our directive is only intended to address the protection of hardware, software, and computing and networking services associated with bulk electric system operations from supply chain-related cybersecurity threats and vulnerabilities.

B. Need for a New or Modified Reliability Standard

1. Cyber Risks Posed by the Supply Chain

NOPR

25. In the NOPR, the Commission observed that the global supply chain, while providing an opportunity for significant benefits to customers, enables opportunities for adversaries to directly or indirectly affect the operations of companies that may result in risks to the end user. The NOPR identified supply chain risks including the insertion of counterfeits, unauthorized production, tampering, theft, or insertion of malicious software, as well as poor manufacturing and development practices. The NOPR pointed to changes in the bulk electric system cyber threat landscape, evidenced by recent malware campaigns targeting supply chain vendors, which highlighted a gap in the protections under the current CIP Reliability Standards.[41]

26. Specifically, the NOPR identified two focused malware campaigns identified by the Department of Homeland Security's Industry Control System—Computer Emergency Readiness Team (ICS–CERT) in 2014.[42] The NOPR stated that this new type of malware campaign is based on the injection of malware while a product or service remains in the control of the hardware or software vendor, prior to delivery to the customer.[43]

Comments

27. NERC acknowledges the NOPR's concerns regarding the threats posed by supply chain management risks to the Bulk-Power System. NERC states that "the supply chains for information and communications technology and industrial control systems present significant risks to [Bulk-Power System] security, providing various opportunities for adversaries to initiate cyberattacks." [44] NERC further explains that "supply chains risks are . . . complex, multidimensional, and constantly evolving, and may include, as the Commission states, insertion of counterfeits, unauthorized production, tampering, theft, insertion of malicious software and hardware, as well as poor manufacturing and development practices." [45] NERC states, however, that as to these supply chains, there are "significant challenges to developing a mandatory Reliability Standard consistent with [FPA] Section 215 . . . ." [46]

28. IRC, Peak, Idaho Power, CyberArk, NEMA, Resilient Societies and other commenters share the NOPR's concern that supply chain risks pose a threat to bulk electric system reliability. IRC states that it supports the Commission's efforts to address the risks associated with supply chain management.[47] Peak explains that "the security risk of supply chain management is a real threat, and . . . a CIP standard for supply chain management may be necessary." [48] Peak notes, for example, that it is possible for a malware campaign to infect industrial control software with malicious code while the product or service is in the control of the hardware and software vendor, and states that, "[w]ithout proper controls, the vendor may deliver this infected product or service, unknowingly passing the risk onto the utility industry customer." [49] Isologic and Resilient Societies comments that supply chain vulnerabilities are one of the most difficult areas of cybersecurity because, among other concerns, entities "are seldom aware of the risks [supply chain vulnerabilities] pose." [50]

29. Idaho Power agrees "that the supply chain could pose an attack vector for certain risks to the bulk electric system." [51] CyberArk states that "infection of vendor Web sites is just one of the potential ways a supply chain management attack could be executed" and notes that network communications links between a vendor and its customer could be used as well.[52] NEMA agrees with the NOPR that "keeping the electric sector supply chain free from malware and other cybersecurity risks is essential." [53] NEMA highlights a number of principles it represents as vendor best practices, and encourages the Commission and NERC to reference those principles as the effort to address supply chain risks progresses.[54]

30. Other commenters do not agree that the risks identified in the NOPR support the Commission's NOPR proposal. The Trade Associations, Southern, and NIPSCO contend that the two malware campaigns identified by ICS–CERT and cited in the NOPR do not actually represent a changed threat landscape that defines a reliability gap. Specifically, the Trade Associations state that the two identified malware campaigns "seek to inject malware, while a product is in the control of and in use by the customer and not, as the NOPR suggests, the vendor." [55] In support of this position, the Trade Associations note that the ICS–CERT mitigation measures for the two alerts "focused on the customer and do not address security controls, while the products are under control of the vendors." [56]

31. The Trade Associations and Southern also contend that there is no information from various NERC programs and activities that leads to a reasonable conclusion that supply chain management issues have caused events or disturbances on the bulk electric

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[39] *See* 16 U.S.C. 824o(a)(4) (defining "reliable operation"); *see also* 16 U.S.C. 824o(a)(3).

[40] *See* 16 U.S.C. 824o(a)(4).

[41] NOPR, 152 FERC ¶ 61,054 at PP 61–62.

[42] *Id.* P 63 (citing ICS–CERT, *Alert: ICS Focused Malware (Update A), https://ics-cert.us-cert.gov/alerts/ICS-ALERT-14-176-02A*; ICS–CERT, *Alert Ongoing Sophisticated Malware Campaign Compromising ICS (Update E), https://ics-cert.us-cert.gov/alerts/ICS-ALERT-14-281-01B*). ICS–CERT is a division of the Department of Homeland Security that works to reduce risks within and across all critical infrastructure sectors by partnering with law enforcement agencies and the intelligence community.

[43] NOPR, 152 FERC ¶ 61,054 at P 63.

[44] NERC NOPR Comments at 8.

[45] *Id.* at 10.

[46] *Id.* at 2.

[47] IRC NOPR Comments at 1–2.

[48] Peak NOPR Comments at 3.

[49] *Id.* at 3.

[50] Isologic and Resilient Societies Joint NOPR Comments at 9.

[51] Idaho Power NOPR Comments at 3.

[52] CyberArk NOPR Comments at 4.

[53] NEMA NOPR Comments at 1.

[54] *Id.* at 2.

[55] Trade Associations NOPR Comments at 20–21.

[56] Trade Associations NOPR Comments at 21; *see also* NIPSCO NOPR Comments at 6.

system.[57] Luminant states that it "does not perceive the same reliability gap that is expressed in the NOPR concerning risks associated with supply chain management" and contends that it is important to understand the potential risks and cost impacts related to any potential mitigation efforts before developing any additional security controls.[58] KCP&L states that it does not share the Commission's view of the supply chain-related reliability gap described in the NOPR and, therefore, does not support the Commission's proposal.[59]

Discussion

32. We find ample support in the record to conclude that supply chain management risks pose a threat to bulk electric system reliability. As NERC commented, "the supply chains for information and communications technology and industrial control systems present significant risks to [Bulk-Power System] security, providing various opportunities for adversaries to initiate cyberattacks." [60] The malware campaigns analyzed by ICS–CERT and identified in the NOPR are only examples of such risks (*i.e.*, supply chain attacks targeting supply chain vendors). Commenters identified additional supply chain-related threats,[61] including events targeting electric utility vendors.[62]

33. Even among the comments opposed to the NOPR, there is acknowledgment that supply chain reliability risks exist. The Trade Associations state that their "respective members have identified security issues associated with potential supply chain disruption or compromise as being a significant threat." [63] Recognizing that such risks exist, we reject the assertion by the Trade Associations and Southern that there is an inadequate basis for the Commission to take action because "[t]he Trade Associations can find nothing within various NERC programs and activities that lead to a reasonable conclusion that supply chain management issues have caused events or disturbances on the bulk power system." [64]

34. We disagree with the Trade Associations' arguments suggesting that the two malware campaigns identified in the NOPR do not represent a change in the threat landscape to the bulk electric system. First, while the Trade Associations are correct that the ICS–CERT alerts referenced in the NOPR describe remediation steps for customers to take in the event of a breach, the vulnerabilities exploited by those campaigns were the direct result of vendor decisions about: (1) How to deliver software patches to their customers and (2) the necessary degree of remote access functionality for their information and communications technology products.[65] Second, the malware campaigns also demonstrate that attackers have expanded their efforts to include the execution of broad access campaigns targeting vendors and software applications, rather than just individual entities. The targeting of vendors and software applications with potentially broad access to BES Cyber Systems [66] marks a turning point in that it is no longer sufficient to focus protection strategies exclusively on post-acquisition activities at individual entities. Instead, we believe that attention should also be focused on minimizing the attack surfaces of information and communications technology products procured to support bulk electric system operations.

2. Objectives of a Supply Chain Management Reliability Standard

NOPR

35. The NOPR stated that the reliability goal of a supply chain risk management Reliability Standard should be a forward-looking, objective-driven Reliability Standard that encompasses activities in the system development life cycle: from research and development, design and manufacturing stages (where applicable), to acquisition, delivery, integration, operations, retirement, and eventual disposal of the responsible entity's information and communications technology and industrial control system supply chain equipment and services. The NOPR explained that the Reliability Standard should support and ensure security, integrity, quality, and resilience of the supply chain and the future acquisition of products and services.[67]

36. The NOPR recognized that, due to the breadth of the topic and the individualized nature of many aspects of supply chain management, a Reliability Standard pertaining to supply chain management security should:

- Respect FPA section 215 jurisdiction by only addressing the obligations of responsible entities. A Reliability Standard should not directly impose obligations on suppliers, vendors or other entities that provide products or services to responsible entities.
- Be forward-looking in the sense that the Reliability Standard should not dictate the abrogation or re-negotiation of currently-effective contracts with vendors, suppliers or other entities.
- Recognize the individualized nature of many aspects of supply chain management by setting goals (the "what"), while allowing flexibility in how a responsible entity subject to the

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[57] Trade Associations NOPR Comments at 21; Southern Comments at 11.

[58] Luminant NOPR Comments at 4.

[59] KCP&L NOPR Comments at 7.

[60] NERC NOPR Comments at 8.

[61] Commenters reference tools and information security frameworks, such as ES–C2M2, NIST–SP–800–161 and NIST–SP–800–53, which describe the scope of supply chain risk that could impact bulk electric system operations. *See* Department of Energy, Electricity Subsector Cybersecurity Capability Maturity Model (February 2014), *http://energy.gov/sites/prod/files/2014/02/f7/ES-C2M2-v1-1-Feb2014.pdf*; NIST Special Publication 800–161, *Supply Chain Risk Management Practices for Federal Information Systems and Organizations* at 51, *http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-161.pdf*; NIST Special Publication 800–53, *Security and Privacy Controls for Federal Information Systems and Organizations, http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf.* These risks include the insertion of counterfeits, unauthorized production and modification of products, tampering, theft, intentional insertion of tracking software, as well as poor manufacturing and development practices. One technical conference participant noted that supply chain attacks can target either (1) the hardware/software components of a system (thereby creating vulnerabilities that can be exploited by a remote attacker) or (2) a third party service provider who has access to sensitive IT infrastructure or holds/maintains sensitive data. *See* Olcott Technical Conference Comments at 1.

[62] Olcott discusses two events targeting electric utility vendors and service providers. Olcott Technical Conference Comments at 2. Specific recent examples of attacks on third party vendors include: (1) unauthorized code found in Juniper Firewalls in 2015; (2) the 2013 Target incident involving stolen vendor credentials; (3) the 2015 Office of Personnel Management incident also involving stolen vendor credentials; and (4) two events targeting electric utility vendors. *See id.* at 1–4.

[63] Trade Associations NOPR Comments at 17.

[64] *See* Trade Associations NOPR Comments at 21.

[65] The ICS–CERT alert regarding ICS Focused Malware indicated that "the software installers for . . . vendors were infected with malware known as the Havex Trojan."

[66] Cyber systems are referred to as "BES Cyber Systems" in the CIP Reliability Standards. The NERC Glossary defines BES Cyber Systems as "One or more BES Cyber Assets logically grouped by a responsible entity to perform one or more reliability tasks for a functional entity." NERC Glossary of Terms Used in Reliability Standards (May 17, 2016) at 15 (NERC Glossary). The NERC Glossary defines "BES Cyber Asset" as "A Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System. Redundancy of affected Facilities, systems, and equipment shall not be considered when determining adverse impact. Each BES Cyber Asset is included in one or more BES Cyber Systems." *Id.*

[67] NOPR, 152 FERC ¶ 61,054 at P 64.

Reliability Standard achieves that goal (the "how").

- Given the types of specialty products involved and the diversity of acquisition processes, the Reliability Standard may need to allow exceptions (*e.g.,* to meet safety requirements and fill operational gaps if no secure products are available).
- Provide enough specificity so that compliance obligations are clear and enforceable. In particular, the Commission anticipated that a Reliability Standard that simply requires a responsible entity to "have a plan" addressing supply chain management would not suffice. Rather, to adequately address the concerns identified in the NOPR, the Commission stated a Reliability Standard should identify specific controls.[68]

37. The NOPR recognized that, because security controls for supply chain management likely vary greatly with each responsible entity due to variations in individual business practices, the right set of supply chain management security controls should accommodate, *inter alia,* an entity's: (1) Procurement process; (2) vendor relations; (3) system requirements; (4) information technology implementation; and (5) privileged commercial or financial information. As examples of controls that may be instructional in the development of any new Reliability Standard, the NOPR identified the following Supply Chain Risk Management controls from NIST SP 800–161: (1) Access Control Policy and Procedures; (2) Security Assessment Authorization; (3) Configuration Management; (4) Identification and Authentication; (5) System Maintenance Policy and Procedures; (6) Personnel Security Policy and Procedures; (7) System and Services Acquisition; (8) Supply Chain Protection; and (9) Component Authenticity.[69]

Comments

38. NERC states that a Commission directive requiring the development of a supply chain risk management Reliability Standard: (1) Should provide a minimum of two years for Reliability Standard development activities; (2) should clarify that any such Reliability Standard build on existing protections in the CIP Reliability Standards and the practices of responsible entities, and focus primarily on those procedural controls that responsible entities can reasonably be expected to implement during the procurement of products and services associated with bulk electric system operations to manage supply chain risks; and (3) must be flexible to account for differences in the needs and characteristics of responsible entities, the diversity of bulk electric system environments, technologies, risks, and issues related to the limited applicability of mandatory NERC Reliability Standards.[70]

39. While sharing the Commission's concern that supply chain risks pose a threat to bulk electric system reliability, some commenters suggest that the Commission address certain threshold issues before moving forward with the NOPR proposal. IRC notes its concern that the NOPR proposal is overly broad, which IRC states could hamper industry's ability to address the Commission's concerns.[71] Idaho Power expresses a concern "that tightening purchasing controls too tightly could also pose a risk because there are limited vendors" available to industry.[72] Idaho Power states that any supply chain Reliability Standard "should be laid out in terms of requirements built around controls that are developed by the regulated entity rather than prescriptive requirements like many other CIP standards." [73] ISO–NE supports the development of procedural controls "such as requirements that Registered Entities must transact with organizations that meet certain criteria, use specified procurement language in contracts, and review and validate vendors' security practices." [74] Peak notes that "the number of vendors for certain hardware, software and services may be limited" and, therefore, a supply chain-related Reliability Standard should grant responsible entities the flexibility "to show preference for, but not the obligation to use, vendors who demonstrate sound supply chain security practices." [75]

40. NERC, the Trade Associations, Southern, Gridwise, and other commenters request that, should the Commission find it reasonable to direct NERC to develop a new or modified Reliability Standard for supply chain management, the Commission adopt certain principles for NERC to follow in the standards development process. As an initial matter, NERC and other commenters state that the Commission should identify the risks that it intends NERC to address.[76] In addition, NERC, SPP RE, and AEP state that the Commission should ensure that any new or modified supply chain-related Reliability Standard carefully considers the risk being addressed against the cost of mitigating that risk.[77]

41. NERC states that the focus of any supply chain risk management Reliability Standard "should be a set of requirements outlining those procedural controls that entities should take, as purchasers of products and services, to design more secure products and modify the security practices of suppliers, vendors, and other parties throughout the supply chain." [78] Similarly, SPP RE notes that, while one responsible entity alone may not have adequate leverage to make a vendor or supplier adopt adequate security practices, "the collective application of the procurement language across a broad collection of Responsible Entities may achieve the intended improvement in security safeguards." [79] Isologic and Resilient Societies recommends limiting the Reliability Standard requirements to a few that are immediately necessary, such as: (1) Preventing the installation of cyber related system or grid components which have been reported by ICS–CERT to be provably vulnerable to a supply chain attack, unless the vulnerability has been corrected; (2) removing from operation any system or component reported by ICS–CERT as containing an exploitable vulnerability; and (3) subjecting hardware and software to penetration testing prior to installation on the grid.[80]

42. In post-technical conference comments, while still opposing the NOPR proposal, APPA suggests certain parameters that should govern the development of any supply chain-related Reliability Standard.[81] Specifically, APPA states that a supply chain-related Reliability Standard should be risk-based and "must embody an approach that enables utilities to perform a risk assessment of the hardware and systems that create potential vulnerabilities," similar to the approach taken in Reliability Standard CIP–014–2, Requirement R1 (Physical

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[68] *Id.* P 66.

[69] NOPR, 152 FERC ¶ 61,054 at P 65 (citing NIST Special Publication 800–161 at 51).

[70] NERC NOPR Comments at 8–9.

[71] IRC NOPR Comments at 2.

[72] Idaho Power NOPR Comments at 3.

[73] *Id.* at 3–4.

[74] ISO–NE NOPR Comments at 2 (citing NERC NOPR Comments at 17–18).

[75] Peak NOPR Comments at 4.

[76] NERC NOPR Comments at 9–11; Trade Associations NOPR Comments at 26; Gridwise NOPR Comments at 5; AEP NOPR Comments at 8; SPP RE NOPR Comments at 11; EnergySec NOPR Comments at 4.

[77] NERC NOPR Comments at 11–12; SPP RE NOPR Comments at 11; AEP NOPR Comments at 9.

[78] NERC NOPR Comments at 17.

[79] SPP RE NOPR Comments at 12.

[80] Isologic and Resilient Societies Joint NOPR Comments at 11.

[81] APPA's post-technical conference comments were submitted jointly with LPPC and TAPS.

Security).[82] In addition, APPA states that a supply chain-related Reliability Standard should not require responsible entities to actively manage third-party vendors or their processes since that would risk involving utilities in areas that are outside of their core expertise. APPA also argues that "it would be unreasonable for any standard that FERC directs to hold utilities liable for the actions of third-party vendors or suppliers."[83] Finally, APPA states that responsible entities should be able to rely on a credible attestation by a vendor or supplier that it complied with identified supply chain security process. APPA contends that this would be the most efficient way to "establish a standard of care on the suppliers' part."[84]

Discussion

43. We direct that NERC, pursuant to section 215(d)(5) of the FPA, develop a forward-looking, objective-driven new or modified Reliability Standard to require each affected entity to develop and implement a plan that includes security controls for supply chain management for industrial control system hardware, software, and services associated with bulk electric system operations. Our directive is consistent with the NOPR comments advocating flexibility as to what form the Commission's directive should take.

44. We agree with NERC and other commenters that a supply chain risk management Reliability Standard should be flexible and fall within the scope of what is possible using Reliability Standards under FPA section 215. The directive discussed below, we believe, is consistent with both points. In particular, the flexibility inherent in our directive should account for, among other things, differences in the needs and characteristics of responsible entities and the diversity of BES Cyber System environments, technologies and risks. For example, the new or modified Reliability Standard may allow a responsible entity to meet the security objectives discussed below by having a plan to apply different controls based on the criticality of different assets. And by directing NERC to develop a new or modified Reliability Standard, the Commission affords NERC the option of modifying existing Reliability Standards to satisfy our directive. Finally, we direct NERC to submit the new or modified Reliability Standard within one year of the effective date of this Final Rule.[85]

45. The plan required by the new or modified Reliability Standard developed by NERC should address, at a minimum, the following four specific security objectives in the context of addressing supply chain management risks: (1) Software integrity and authenticity; (2) vendor remote access; (3) information system planning; and (4) vendor risk management and procurement controls. Responsible entities should be required to achieve these four objectives but have the flexibility as to how to reach the objective (*i.e.,* the Reliability Standard should set goals (the "what"), while allowing flexibility in how a responsible entity subject to the Reliability Standard achieves that goal (the "how")).[86] Alternatively, NERC can propose an equally effective and efficient approach to address the issues raised in the objectives identified below. In addition, while in the discussion below we identify four objectives, NERC may address additional supply chain management objectives in the standards development process, as it deems appropriate.

46. The new or modified Reliability Standard should also require a periodic reassessment of the utility's selected controls. Consistent with or similar to the requirement in Reliability Standard CIP–003–6, Requirement R1, the Reliability Standard should require the responsible entity's CIP Senior Manager to review and approve the controls adopted to meet the specific security objectives identified in the Reliability Standard at least every 15 months. This periodic assessment should better ensure that the required plan remains up-to-date, addressing current and emerging supply chain-related concerns and vulnerabilities.

47. Also, consistent with this reliance on an objectives-based approach, and as part of this periodic review and approval, the responsible entity's CIP Senior Manager should consider any guidance issued by NERC, the U.S. Department of Homeland Security (DHS) or other relevant authorities for the planning, procurement, and operation of industrial control systems and supporting information systems equipment since the prior approval, and identify any changes made to address the recent guidance. This periodic reconsideration will help ensure an ongoing, affirmative process for reviewing and, when appropriate, incorporating such guidance.

First Objective: Software Integrity and Authenticity

48. The new or modified Reliability Standard must address verification of: (1) The identity of the software publisher for all software and patches that are intended for use on BES Cyber Systems; and (2) the integrity of the software and patches before they are installed in the BES Cyber System environment.

49. This objective is intended to reduce the likelihood that an attacker could exploit legitimate vendor patch management processes to deliver compromised software updates or patches to a BES Cyber System. One of the two focused malware campaigns identified by ICS–CERT in 2014 utilized similar tactics, executing what is commonly referred to as a "Watering Hole" attack[87] to exploit affected information systems. Similar tactics appear to have been used in a recently disclosed attack targeting electric sector infrastructure in Japan.[88] These types of attacks might have been prevented had the affected entities applied adequate integrity and authenticity controls to their patch management processes.

50. As NERC recognizes in its NOPR comments, NIST SP–800–161 "establish[es] instructional reference points for NERC and its stakeholders to leverage in evaluating the appropriate framework for and security controls to include in any mandatory supply chain management Reliability Standard."[89] NIST SP–800–161 includes a number of security controls which, when taken together, reduce the probability of a successful Watering Hole or similar cyberattack in the industrial control system environment and thus could assist in addressing this objective. For example, in the System and Information

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[82] APPA Post-Technical Conference Comments at 3–4.

[83] *Id.* at 4–5.

[84] *Id.* at 5.

[85] We note that the Trade Associations request that the Commission allow "at least one year for discussion, development, and approval by the NERC Board of Trustees." *See* Trade Associations Post-Technical Conference Comments at 22. NERC should submit an informational filing within ninety days of the effective date of this Final Rule with a plan to address the Commission's directive.

[86] *See* Order No. 672, FERC Stats. & Regs. ¶ 31,204 at P 260.

[87] "Watering Hole" attacks exploit poor vendor/client patching and updating processes. Attackers generally compromise a vendor of the intended victim and then use the vendor's information system as a jumping off point for their attack. Attackers will often inject malware or replace legitimate files with corrupted files (usually a patch or update) on the vendor's Web site as part of the attack. The victim then downloads the files without verifying each file's legitimacy believing that it is included in a legitimate patch or update.

[88] *See* Cylance, Operation DustStorm, *https://www.cylance.com/hubfs/2015_cylance_website/assets/operation-dust-storm/Op_Dust_Storm_Report.pdf.*

[89] NERC NOPR Comments at 16–17; *see also* Resilient Societies NOPR Comments at 11.

Integrity (SI) control family, control SI–7 suggests that the integrity of information systems and components should be tested and verified using controls such as digital signatures and obtaining software directly from the developer. In the Configuration Management (CM) control family, control CM–5(3) requires that the information system prevent the installation of firmware or software without verification that the component has been digitally signed to ensure that hardware and software components are genuine and valid. NIST SP–800–161, while not meant to be definitive, provides examples of controls for addressing the Commission's directive regarding this first objective. Other security controls also could meet this objective.

Second Objective: Vendor Remote Access to BES Cyber Systems

51. The new or modified Reliability Standard must address responsible entities' logging and controlling all third-party (*i.e.*, vendor) initiated remote access sessions. This objective covers both user-initiated and machine-to-machine vendor remote access.

52. This objective addresses the threat that vendor credentials could be stolen and used to access a BES Cyber System without the responsible entity's knowledge, as well as the threat that a compromise at a trusted vendor could traverse over an unmonitored connection into a responsible entity's BES Cyber System. The theft of legitimate user credentials appears to have been a critical aspect to the successful execution of the 2015 cyberattack on Ukraine's power grid.[90] In addition, controls adopted under this objective should give responsible entities the ability to rapidly disable remote access sessions in the event of a system breach.

53. DHS noted the importance of controlling vendor remote access in its alert on the Ukrainian cyberattack: "Remote persistent vendor connections should not be allowed into the control network. Remote access should be operator controlled, time limited, and procedurally similar to "lock out, tag out." The same remote access paths for vendor and employee connections can be used; however, double standards should not be allowed." [91]

54. NIST SP–800–53 and NIST SP–800–161 provide several security controls which, when taken together, reduce the probability that an attacker could use legitimate third-party access to compromise responsible entity information systems. In the Systems and Communications (SC) control family, for example, control SC–7 addressing boundary protection requires that an entity implement appropriate monitoring and control mechanisms and processes at the boundary between the entity and its suppliers, and that provisions for boundary protections should be incorporated into agreements with suppliers. These protections are applied regardless of whether the remote access session is user-initiated or interactive in nature.

55. In the Access Control (AC) control family, control AC–17 requires usage restrictions, configuration/connection requirements, and monitoring and control for remote access sessions, including the entity's ability to expeditiously disconnect or disable remote access. In the Identification and Authentication (IA) control family, control IA–5 requires changing default "authenticators" (*e.g.*, passwords) prior to information system installation. In the System and Information Integrity (SI) control family, control SI–4 addresses monitoring of vulnerabilities resulting from past information and communication technology supply chain compromises, such as malicious code implanted during software development and set to activate after deployment. These sources, while not meant to be definitive, provide examples of controls for addressing the Commission's directive regarding objective two. Other security controls also could meet this objective.

Third Objective: Information System Planning and Procurement

56. The new or modified Reliability Standard must address how a responsible entity will include security considerations as part of its information system planning and system development lifecycle processes. As part of this objective, the new or modified Reliability Standard must address a responsible entity's CIP Senior Manager's (or delegate's) identification and documentation of the risks of proposed information system planning and system development actions. This objective is intended to ensure adequate consideration of these risks, as well as the available options for hardening the responsible entity's information system and minimizing the attack surface.

57. This third objective addresses the risk that responsible entities could unintentionally plan to procure and install unsecure equipment or software within their information systems, or could unintentionally fail to anticipate security issues that may arise due to their network architecture or during technology and vendor transitions. For example, the BlackEnergy malware campaign identified by ICS–CERT and referenced in the NOPR resulted from the remote exploitation of previously unidentified vulnerabilities, which allowed attackers to remotely execute malicious code on remotely accessible devices.[92] According to ICS–CERT, this attack might have been mitigated if affected entities had taken steps during system development and planning to: (1) Minimize network exposure for all control system devices/subsystems; (2) ensure that devices were not accessible from the internet; (3) place devices behind firewalls; and (4) utilize secure remote access techniques.[93] The third objective also supports, where appropriate, the need for strategic technology refreshes as recommended by ICS–CERT in response to the 2015 Ukraine cybersecurity incident.[94]

58. NIST SP 800–53 and SP 800–161 provide several controls which, when taken together, reduce the likelihood that an information system will be deployed and/or remain in service with potential vulnerabilities that have not been identified or adequately considered. For example, in the NIST SP 800–53 Systems Acquisition (SA) control family, control SA–3 provides that organizations should: (1) Manage information systems using an organizationally-defined system development life cycle that incorporates information security considerations; and (2) integrate the organizational information security risk management process into system development life cycle activities.[95] Similarly, control SA–8 recommends using secure engineering principles during the planning and acquisition phases of future projects such as: (1) Developing layered protections; (2) establishing sound security policy, architecture, and controls as the foundation for design; (3) incorporating security requirements into the system development life cycle; and (4) reducing risk to acceptable levels, thus enabling informed risk

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[90] *See* E–ISAC, *Analysis of the Cyber Attack on the Ukrainian Power Grid* at 3 (Mar. 18, 2016), *http://www.nerc.com/pa/CI/ESISAC/Documents/E-ISAC_SANS_Ukraine_DUC_18Mar2016.pdf.*

[91] *See* ICS–CERT Alert, *Cyber-Attack Against Ukrainian Critical Infrastructure, https://ics-cert.us-cert.gov/alerts/IR-ALERT-H-16-056-01.*

[92] *See* ICS–CERT Alert, *Ongoing Sophisticated Malware Campaign Compromising ICS (Update E).*

[93] *See* ICS–CERT Advisory, *GE Proficy Vulnerabilities, https://ics-cert.us-cert.gov/advisories/ICSA–14–023–01.*

[94] *See* ICS–CERT Alert, *Cyber-Attack Against Ukrainian Critical Infrastructure.*

[95] NIST Special Publication 800–53, Appendix F (Security Control Catalog) at 157.

management decisions.[96] Finally, control SA–22 provides controls to address unsupported system components, recommending the replacement of information and communication technology components when support is no longer available, or the justification and approval of an unsupported system component to meet specific business needs. These sources, while not meant to be definitive, provide examples of controls for addressing the Commission's directive regarding objective three. Other security controls also could meet this objective.

Fourth Objective: Vendor Risk Management and Procurement Controls

59. The new or modified Reliability Standard must address the provision and verification of relevant security concepts in future contracts for industrial control system hardware, software, and computing and networking services associated with bulk electric system operations. Specifically, NERC must address controls for the following topics: (1) Vendor security event notification processes; (2) vendor personnel termination notification for employees with access to remote and onsite systems; (3) product/services vulnerability disclosures, such as accounts that are able to bypass authentication or the presence of hardcoded passwords; (4) coordinated incident response activities; and (5) other related aspects of procurement. NERC should also consider provisions to help responsible entities obtain necessary information from their vendors to minimize potential disruptions from vendor-related security events.

60. This fourth objective addresses the risk that responsible entities could enter into contracts with vendors who pose significant risks to their information systems, as well as the risk that products procured by a responsible entity fail to meet minimum security criteria. In addition, this objective addresses the risk that a compromised vendor would not provide adequate notice and related incident response to responsible entities with whom that vendor is connected.

61. The Department of Energy (DOE) Cybersecurity Procurement Language for Energy Delivery Systems document outlines security principles and controls for entities to consider when designing and procuring control system products and services (*e.g.*, software, systems, maintenance, and networks), and provides example language that could be incorporated into procurement specifications. The procurement language encourages buyers to incorporate baseline procurement language that ensures the supplier establishes, documents and implements risk management practices for supply chain delivery of hardware, software, and firmware.[97] In addition, NIST SP 800–161 encourages buyers to use the Information and Communications Technology supply chain risk management (ICT SCRM) plans for their respective systems and missions throughout their acquisition activities.[98] The controls in the ICT SCRM plans can be applied in different life cycle processes.

62. NIST SP 800–161 also provides specific recommendations in control SA–4 pertaining to systems acquisition processes, which are relevant for consideration during the standards development process, including but not limited to: (1) Defining requirements that cover regulatory requirements (*i.e.*, telecommunications or IT), technical requirements, chain of custody, transparency and visibility, sharing information on supply chain security incidents throughout the supply chain, rules for disposal or retention of elements such as components, data, or intellectual property, and other relevant requirements; (2) defining requirements for critical elements in the supply chain to demonstrate a capability to remediate emerging vulnerabilities based on open source information and other sources; and (3) defining requirements for the expected life span of the system and ensuring that suppliers can provide insights into their plans for the end-of-life of components. Other relevant provisions can be found in the System and Communications Protection (SC) control family under control SC–18 addressing SCRM guidance for mobile code, which recommends that organizations employ rigorous supply chain protection techniques in the acquisition, development, and use of mobile code to be deployed in information systems.[99] These sources, while not meant to be definitive, provide examples of controls for addressing the Commission's directive regarding objective four. Other security controls also could meet this objective.

3. Existing CIP Reliability Standards

Comments

63. NERC comments that although the CIP Reliability Standards do not explicitly address supply chain procurement practices, existing requirements mitigate the supply chain risks identified in the NOPR. In particular, NERC states that requirements in Reliability Standards CIP–004–6, CIP–005–5, CIP–006–6, CIP–007–6, CIP–008–5, CIP–009–6, CIP–010–2, and CIP–011–2 "include controls that correspond to controls in NIST SP 800–161."[100]

64. For example, NERC explains that responsible entity compliance with Reliability Standard CIP–004–6, addressing the implementation of cybersecurity awareness programs, may include reinforcement of cybersecurity practices to mitigate supply chain risks. NERC also states that requirements in Reliability Standard CIP–004–6 (addressing personnel risk assessment) and requirements in Reliability Standards CIP–004–6, CIP–005–5, CIP–006–6, CIP–007–6, and CIP–010–2 (addressing electronic and physical access) apply to any outside vendors or contractors.

65. The Trade Associations, Arkansas, G&T Cooperatives, NIPSCO, Luminant, Southern, NextEra, and SCE contend that the existing CIP Reliability Standards, at least partly, address supply chain risks that are within a responsible entity's control.

66. The Trade Associations state that, while the existing CIP Reliability Standards do not contain explicit provisions addressing supply chain management, "transmission owners and operators already have significant responsibilities to perform under various Commission-approved CIP standards that already address supply chain issues."[101] Specifically, the Trade Associations, NIPSCO, and others state that Reliability Standard CIP–010–2 establishes requirements for cyber asset change management that mandate extensive baseline configuration testing and change monitoring, as well as vulnerability assessments, prior to connecting a new cyber asset to a High Impact BES Cyber Asset.[102]

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[96] *Id.* at 162.

[97] *See* Energy Sector Control Systems Working Group, *Cybersecurity Procurement Language—Energy Delivery Systems* at 27, *http://www.energy.gov/sites/prod/files/2014/04/f15/CybersecProcurementLanguage-EnergyDeliverySystems_040714_fin.pdf.*

[98] *See* NIST Special Publication 800–161 at 51.

[99] Mobile code is a software program or parts of a program obtained from remote information systems, transmitted across a network, and executed on a local information system without explicit installation or execution by the recipient. NIST Special Publication 800–53, Appendix B (Glossary) at 14. Mobile code technologies include, for example, Java, JavaScript, ActiveX, Postscript, PDF, Shockwave movies, Flash animations, and VBScript. *Id.*

[100] NERC NOPR Comments at 15–16.

[101] Trade Associations NOPR Comments at 19–20.

[102] Trade Associations NOPR Comments at 20; NIPSCO NOPR Comments at 5; Southern NOPR

Continued

67. The Trade Associations also contend that the CIP Reliability Standards provide adequate vendor remote access protections by mandating: (1) Controls that restrict personnel access (physical and electronic) to protected information systems; (2) controls that prevent direct access to applicable systems for interactive remote access sessions using routable protocols; (3) the use of encryption for connections extending outside of an electronic security perimeter; (4) the use of two factor authentication when accessing medium and high impact systems; and (5) integration controls which require changing known default accounts and passwords.[103]

68. NIPSCO, Luminant, and G&T Cooperatives point to Reliability Standard CIP–007–6 as an existing Reliability Standard that addresses supply chain risks. Reliability Standard CIP–007–6 requires responsible entities to have processes under which only necessary ports and services should be enabled; security patches should be tracked, evaluated, and installed on applicable BES Cyber Systems; and anti-virus software or other prevention tools should be used to prevent the introduction and propagation of malicious software on all Cyber Assets within an Electronic Security Perimeter.[104]

69. Commenters also identify existing voluntary guidelines that, they contend, augment the existing CIP Reliability Standards to further address any potential risks posed by the supply chain. Southern points to voluntary cybersecurity procurement guidance materials developed by the DHS and the DOE as examples of procurement language that could be used in the course of vendor negotiations. Southern states that the DHS and DOE guidelines recognize the need for flexibility and allow for multiple contractual approaches.[105]

70. Commenters suggest that the Commission direct NERC to develop cybersecurity procurement guidance documents as opposed to a mandatory Reliability Standard. AEP, NextEra, and Southern state that the Commission could direct NERC to develop guidance documents addressing supply chain risk management based, in part, on the DHS and DOE voluntary cybersecurity procurement guidance materials.[106] Luminant asserts that NERC-developed guidance "would effectively communicate key issues while permitting industry the flexibility to effectively protect their BES Cyber Systems in a way most effective for that entity and at the lowest cost." [107]

Discussion

71. While we recognize that existing CIP Reliability Standards include requirements that address aspects of supply chain management, we determine that existing Reliability Standards do not adequately protect against supply chain risks that are within a responsible entity's control. Specifically, we find that existing CIP Reliability Standards do not provide adequate protection for the four aspects of supply chain risk management that underlie the four objectives for a new or modified Reliability Standard discussed above.[108] Moreover, a fundamental premise of cyber security is "defense in depth," and addressing issues in the supply chain (to the extent a utility reasonably can) is an important component of a strong, multi-layered defense.

Software Integrity and Authenticity

72. With regard to software integrity and authenticity, we agree with commenters who state that the existing CIP Reliability Standards contain requirements for responsible entities to implement a patch management process for tracking, evaluating, and installing cybersecurity patches and to implement processes to detect, prevent, and mitigate the threat of malicious code. These provisions, however, do not require responsible entities to verify the identity of the software publisher for all software and patches that are intended for use on their BES Cyber Systems or to verify the integrity of the software and patches before they are installed in the BES Cyber System environment.[109] As discussed above, the CIP Reliability Standards should address compromised software or patches that a responsible entity receives from a vendor, in order to protect the bulk electric system from Watering-Hole or similar cyberattacks. These concerns are not addressed by existing CIP Reliability Standards.

73. Mandatory controls in the existing CIP Reliability Standards referenced by commenters do not provide sufficient protection against attacks that compromise software and software patch integrity and authenticity. For example, while Reliability Standard CIP–007–6, Requirement R2 requires responsible entities to enforce a patch management process for tracking, evaluating, and installing cyber security patches for applicable systems, including evaluating security patches for applicability, the requirement does not address mechanisms to acquire the patch file from a vendor in a secure manner and methods to validate the integrity of a patch file before installation.

74. With respect to mandatory configuration controls, Reliability Standard CIP–010–2, Requirement R1 requires responsible entities to authorize and document all changes to baseline configurations and, where technically feasible, test patches in a test environment before installing. However, NERC's technical guidance document for CIP–010–2, Requirement R1, Part 1.2 does not require the authorizer to first verify the authenticity of a patch. Similarly, the testing of patches in a test environment under Requirement R1.5 would likely provide insufficient protection as many malware variants are programmed to execute only after the system is rebooted several times. Regarding patch source monitoring, the guidelines and technical basis section for Reliability Standard CIP–007–6 suggests that responsible entities should obtain security patches from original sources, where possible, and indicates that patches should be approved or certified by another source before being assessed and applied.[110] The Reliability Standard, however, does not require the use of these techniques. Implementing controls that verify integrity and authenticity of software and its publishers may help mitigate security gaps listed above.

75. In sum, the current CIP Reliability Standards do contain certain controls addressing the risks posed by malware, as stated by commenters. Verifying software integrity and authenticity, however, is a reasonable and appropriate complement to these controls, is not required by the current Standards, and is supported by the

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Comments at 12; Luminant NOPR Comments at 4–5; SCE NOPR Comments at 6.

[103] Trade Associations Post-Technical Conference Comments at 6.

[104] NIPSCO NOPR Comments at 5; Luminant NOPR Comments at 4; G&T Cooperatives NOPR Comments at 8–9.

[105] Southern NOPR Comments at 13.

[106] AEP NOPR Comments at 7–8; NextEra NOPR Comments at 4–5; Southern NOPR Comments at 12–13.

[107] Luminant NOPR Comments at 5.

[108] Since the directive to NERC to develop a new or modified Reliability Standard is limited to the four objectives discussed above, we limit our analysis of the existing CIP Reliability Standards to requirements that relate to those objectives.

[109] *See* Trade Associations NOPR Comments at 38 (indicating that integrity checking mechanisms used to verify software, firmware, and information integrity found in the NIST SP–800–161 System and Information Integrity (SI) control family are not addressed in the CIP version 5 Reliability Standards).

[110] Reliability Standard CIP–007–6 (Cyber Security—Systems Security Management), Guidelines and Technical Basis at 42–43.

principle of defense-in-depth. In fact, this verification can be viewed as the first line of defense against malware-infected software.

Vendor Remote Access to BES Cyber Systems

76. On the subject of vendor remote access, which includes vendor user-initiated Interactive Remote Access and vendor machine-to-machine remote access, existing CIP Reliability Standards contain system access requirements, including a requirement for security event monitoring. However, the CIP Reliability Standards do not require remote access session logging for machine-to-machine remote access, nor do they address the ability to monitor or close unsafe remote connections for both vendor Interactive Remote Access and vendor machine-to-machine remote access.[111] The CIP Reliability Standards should address enhanced session logging requirements for vendor remote access in order to improve visibility of activity on BES Cyber Systems and give responsible entities the ability to rapidly disable remote access sessions in the event of a system breach.

77. The existing requirements referenced by NERC, the Trade Associations, and other commenters do not adequately address access restrictions for vendors. For example, while Reliability Standard CIP–004–6, Requirements R4 and R5 provide controls that must be applied to vendors such as restricting access to individuals ''based on need,'' these Requirements do not include post-authorization logging or control of remote access. The existing CIP Reliability Standards do not require a responsible entity to monitor data traffic that traverses remote communication to their BES Cyber Systems. The absence of post-authorization monitoring and logging presents an opportunity for unmonitored malicious or otherwise inappropriate remote communication to or from a BES Cyber System. The inability of a responsible entity to rapidly terminate a connection may allow malicious or otherwise inappropriate communication to propagate, contributing to a degradation of a BES Cyber Asset's function. Enhanced visibility into remote communications and the ability to rapidly terminate a remote communication could mitigate such a vulnerability.

78. Reliability Standard CIP–005–5, Requirement R1 provides controls for vendor machine-to-machine and vendor user-initiated Interactive Remote Access sessions by restricting all inbound and outbound communications through an identified Electronic Access Point for bi-directional routable protocol connections. Reliability Standard CIP–005–5, Requirement R2 provides controls for vendor interactive remote access sessions by requiring the use of encryption and requiring multi-factor authentication. However, the provisions of Reliability Standard CIP–005–5, Requirement R2 addressing interactive remote access management do not apply to vendor machine-to-machine remote access. The Reliability Standard CIP–005–5, Requirement R2 controls addressing interactive remote access management only apply to remote connections that are user-initiated (*i.e.,* initiated by a person). Machine-to-machine connections are not user-initiated and, therefore, are not subject to the requirements of Reliability Standard CIP–005–5, Requirement R2. When the interactive remote access management controls of Reliability Standard CIP–005–5, Requirement R2 do not apply, a machine-to-machine remote communication may access a BES Cyber System without any access credentials, over an unencrypted channel, and without going through an Intermediate System.

79. For both Interactive Remote Access and machine-to-machine remote access, Reliability Standard CIP–007–6, Requirement R3 requires monitoring for malicious code and Requirement R4 requires logging of successful and unsuccessful login attempts, as well as logging detected malicious code. However, Reliability Standard CIP–007–6 does not address the risks posed by inappropriate activity that could occur during a remote communication. The lack of a requirement addressing the detection of inappropriate activity represents a risk because the responsible entity may not be aware if an authorized user is performing inappropriate activity on a BES Cyber Asset via a remote connection. This risk is higher for machine-to-machine communication due to the lack of authentication and encryption requirements in the existing CIP Reliability Standards, lowering the threshold for a malicious actor to execute a man-in-the-middle attack to gain access to a BES Cyber System and conduct inappropriate activity such as reconnaissance or code modification.

80. Therefore, we recognize that the current CIP Reliability Standards do contain certain controls addressing the risks posed by vendor remote access, as noted by commenters. However, the current CIP Reliability Standards do not require monitoring remote access sessions or closing unsafe remote connections for either vendor Interactive Remote Access and vendor machine-to-machine remote access. Accordingly, we determine that vendor remote access is not adequately addressed in the approved CIP Reliability Standards and, therefore, is an objective that must be addressed in the supply chain management plans directed in this final rule.

Information System Planning and Procurement

81. The existing CIP Reliability Standards do not address information system planning. Recent cybersecurity incidents[112] have made it apparent that overall system planning is as important to overall BES Cyber System security and reliability as any other component of security architecture. In general, the CIP Reliability Standards do not provide a framework for maintaining ongoing awareness of information security, vulnerabilities, and threats to support organization risk management decisions;[113] nor do they address the concept of integrating continuous improvement of organizational security posture with supply chain risk management as recommended by NIST SP 800–161.[114] Based on the threats evidenced by recent cybersecurity incidents, the absence of security considerations in system lifecycle processes constitutes a gap in the CIP Reliability Standards that could contribute to pervasive and systemic vulnerabilities that threaten bulk electric system reliability.

82. The existing CIP Reliability Standards also do not provide for procurement controls for industrial control system hardware, software, and computing and networking services. As discussed above, procurement controls are intended to address the threat that responsible entities could enter into contracts with vendors who pose significant risks to their information systems or procure products that fail to

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[111] *See* Trade Association NOPR Comments at 43 (indicating that mechanisms for monitoring for unauthorized personnel, connections, devices, and software found in the NIST SP–800–161 System and Information Integrity (SI) control family are not addressed in the CIP version 5 Reliability Standards).

[112] *See* E–ISAC, *Analysis of the Cyber Attack on the Ukrainian Power Grid* at 3 (March 18, 2016); *see also* Dell, *Dell Security Annual Threat Report* (2015) at 7, *https://software.dell.com/docs/2015-dell-security-annual-threat-report-white-paper-15657.pdf;* Olcott Technical Conference Comments at 2.

[113] *See* NIST Special Publication 800–137, *Information Security Continuous Monitoring (ISCM) for Federal Information Systems and Organizations* at vi, *http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-137.pdf.*

[114] NIST Special Publication 800–161 at 46.

meet minimum security criteria, as well as the risk that a compromised vendor would not provide adequate notice and related incident response to responsible entities with whom that vendor is connected.

83. With regard to commenters' suggestion that the Commission direct NERC to develop cybersecurity procurement guidance documents as opposed to a mandatory Reliability Standard, we agree that the voluntary efforts identified by commenters could provide guidance or otherwise inform NERC's standard development process. We conclude, however, that relying on voluntary guidelines to address the supply chain risks described above is not sufficient to fulfill the Commission's responsibilities under FPA section 215.

4. Vendor Risk Management and Procurement Controls

Comments

84. NERC, G&T Cooperatives, Arkansas and others state that responsible entities have limited influence over vendors and contractors, and, therefore, a limited ability to affect the supply chain for industrial control system hardware, software, and computing and networking services associated with bulk electric system operations.[115] NERC contends that any supply chain management Reliability Standard "must balance the reliability need to implement supply chain management security controls with entities' business need to obtain products and services at a reasonable cost." [116] NERC maintains that responsible entities lack bargaining power to persuade vendors or suppliers to implement cybersecurity controls without significantly increasing the cost of their products or services. NERC points to NIST SP 800–161 to highlight that implementing supply chain security management controls "will require financial and human resources, not just from the [acquirer] directly but also potentially from their system integrators, suppliers, and external service providers that would also result in increased cost to the acquirer." [117]

85. G&T Cooperatives contend that they "have minimal control over their suppliers and are not able to identify all potential vulnerabilities associated with each and every supplier and their products/parts." [118] G&T Cooperatives and Arkansas maintain that responsible entities do not have the ability to force a vendor to address all potential vulnerabilities. G&T Cooperatives assert that even if a contract between a responsible entity and a supplier "could include" language requiring the supplier to implement security controls, "it is not feasible for contractual terms . . . to address all potential vulnerabilities related to supply chain management." [119]

86. NERC, Trade Associations, G&T Cooperatives and Arkansas also raise a concern that the Commission's proposal could place compliance risk on responsible entities for actions beyond their control and, ultimately, incent responsible entities to avoid upgrades that could trigger such compliance risk.[120] NERC states that any supply chain management Reliability Standard should be drafted so that it "creates affirmative obligations to implement supply chain management security controls without holding entities strictly liable for any failure of those controls to eliminate all supply chain threats and vulnerabilities." [121] NERC explains that if a supply chain management Reliability Standard is not reasonably scoped to avoid unreasonable compliance risk, it could create a disincentive for responsible entities to purchase and install new technologies and equipment.

87. G&T Cooperatives state that "placing the compliance risk of vendor and supplier security vulnerability on Responsible Entities could incent Responsible Entities to avoid upgrades to their industrial control system hardware, software, and other services." G&T Cooperatives explain that there are three primary incentives for a responsible entity to avoid upgrades if faced with compliance risks: (1) New regulations would result in additional costs for vendors and suppliers that would be passed on to the end-user; (2) since security patches are not issued by vendors for unsupported hardware and software, there is less security patch management responsibility for the responsible entity; and (3) avoiding new hardware and software reduces the risk of introducing undetected security threats.[122]

Discussion

88. Our directive to NERC to develop a new or modified Reliability Standard that addresses the objectives outlined above balances the supply chain risks facing the bulk electric system against any potential challenges raised by vendor relationships. We believe that the concerns raised in comments with respect to responsible entities' relationships with vendors in relation to supply chain risks are valid. Our directive is informed by this concern and reflects a reasonable balance between the risks facing bulk electric system reliability from the supply chain and concerns over vendor relationships. The directive strikes this balance by addressing supply chain risks that are within responsible entities' control, and we do not expect a new or modified supply chain Reliability Standard to impose obligations directly on vendors. Moreover, entities will not be responsible for vendor errors beyond the scope of the controls implemented to comply with the Reliability Standards.

89. With respect to concerns that the Commission's proposal could place compliance risk on responsible entities for actions beyond their control, which some commenters argue would prompt responsible entities to avoid upgrades that could trigger such compliance risk, we reiterate that the intent of the directive is to address supply chain risks that are within the responsible entities' control. As part of NERC's standard development process, we expect NERC to establish provisions addressing compliance obligations in a manner that avoids shifting liability from a vendor for its mistakes to a responsible entity. Finally, we view the argument that a new or modified Reliability Standard will result in a substantial increase in costs to be speculative because, beyond requiring NERC to address the four objectives discussed above, or some equally effective and efficient alternatives, our directive does not require NERC to develop a Reliability Standard that mandates any particular controls or actions.

III. Information Collection Statement

90. The Paperwork Reduction Act (PRA) [123] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB regulations [124] require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection of information, OMB will

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[115] NERC NOPR Comments at 11–12; G&T Cooperatives NOPR Comments at 9; Arkansas NOPR Comments at 5.

[116] NERC NOPR Comments at 11–12.

[117] *Id.* (citing NIST Special Publication 800–161 at 3).

[118] G&T Cooperatives NOPR Comments at 9.

[119] *Id.* at 9.

[120] NERC NOPR Comments at 13; Trade Associations NOPR Comments at 24–25; G&T Cooperatives NOPR Comments at 9–10; Arkansas NOPR Comments at 6.

[121] NERC NOPR Comments at 13.

[122] G&T Cooperatives NOPR Comments at 9.

[123] 44 U.S.C. 3507(d).

[124] 5 CFR 1320.

assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

91. The Commission will submit the information collection requirements to OMB for its review and approval. The Commission solicits public comments on its need for this information, whether the information will have practical utility, the accuracy of burden and cost estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

92. The information collection requirements in this Final Rule in Docket No. RM15–14–002 for NERC to develop a new or to modify a Reliability Standard for supply chain risk management, should be part of FERC–725 (Certification of Electric Reliability Organization; Procedures for Electric Reliability Standards (OMB Control No. 1902–0225)). However, there is an unrelated item which is currently pending OMB review under FERC–725, and only one item per OMB Control No. can be pending OMB review at a time. Therefore, the requirements in this Final Rule in RM15–14–002 are being submitted under a new temporary or interim collection number FERC–725(1A) to ensure timely submittal to OMB. In the long-term, Commission staff plans to administratively move the requirements and associated burden of FERC–725(1A) to FERC–725.

93. Burden Estimate and Information Collection Costs: The requirements for the ERO to develop Reliability Standards and to provide data to the Commission are included in the existing FERC–725. FERC–725 includes information used by the Commission to implement the statutory provisions of section 215 of the FPA. FERC–725 includes the burden, reporting and recordkeeping requirements associated with: (a) Self-Assessment and ERO Application, (b) Reliability Assessments, (c) Reliability Standards Development, (d) Reliability Compliance, (e) Stakeholder Survey, and (f) Other Reporting. In addition, the Final Rule will not result in a substantive increase in burden because this requirement to develop standards is covered under FERC–725. However because FERC is using the temporary information collection number, FERC–725(1A), FERC will use "placeholder" estimates of 1 response and 1 burden hour for the burden calculation.

IV. Regulatory Flexibility Act Analysis

94. The Regulatory Flexibility Act of 1980 (RFA)[125] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) revised its size standard (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates.[126] The entities subject to the Reliability Standards developed by the North American Electric Reliability Corporation (NERC) include users, owners, and operators of the Bulk-Power System, which serves more than 334 million people. In addition, NERC's current responsibilities include the development of Reliability Standards. Accordingly, the Commission certifies that the requirements in this Final Rule will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis is required.

V. Environmental Analysis

95. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[127] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[128] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

VI. Effective Date and Congressional Notification

96. This Final Rule is effective September 27, 2016. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Final Rule is being submitted to the Senate, House, and Government Accountability Office.

VII. Document Availability

97. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

98. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

By the Commission.

Issued: July 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: The following Appendix will not appear in the *Code of Federal Regulations*.

APPENDIX—COMMENTERS

Abbreviation	Commenter
AEP	American Electric Power Service Corporation.
ACS	Applied Control Solutions, LLC.
APS	Arizona Public Service Company.

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[125] 5 U.S.C. 601–612.

[126] SBA Final Rule on "Small Business Size Standards: Utilities," 78 FR 77,343 (Dec. 23, 2013).

[127] *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[128] 18 CFR 380.4(a)(2)(ii).

APPENDIX—COMMENTERS—Continued

Abbreviation	Commenter
Arkansas	Arkansas Electric Cooperative.
BPA	Bonneville Power Administration.
CEA	Canadian Electricity Association.
Consumers Energy	Consumers Energy Company.
CyberArk	CyberArk.
EnergySec	Energy Sector Security Consortium, Inc.
Ericsson	Ericsson.
Resilient Societies	Foundation for Resilient Societies.
G&T Cooperatives	Associated Electric Cooperative, Inc., Basin Electric Power Cooperative, and Tri-State Generation and Transmission Association, Inc.
Gridwise	Gridwise Alliance.
Idaho Power	Idaho Power Company.
Indegy	Indegy.
IESO	Independent Electricity System Operator.
IRC	ISO/RTO Council.
ISO New England	ISO New England Inc.
ITC	ITC Companies.
Isologic	Isologic, LLC.
KCP&L	Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company.
Luminant	Luminant Generation Company, LLC.
NEMA	National Electrical Manufacturers Association.
NERC	North American Electric Reliability Corporation.
NextEra	NextEra Energy, Inc.
NIPSCO	Northern Indiana Public Service Co.
NWPPA	Northwest Public Power Association.
Peak	Peak Reliability.
PNM	PNM Resources.
Reclamation	Department of Interior Bureau of Reclamation.
SIA	Security Industry Association.
SCE	Southern California Edison Company.
Southern	Southern Company Services.
SPP RE	Southwest Power Pool Regional Entity.
SWP	California Department of Water Resources State Water Project.
TVA	Tennessee Valley Authority.
Trade Associations	Edison Electric Institute, American Public Power Association, National Rural Electric Cooperative Association, Electric Power Supply Association, Transmission Access Policy Study Group, and Large Public Power Council.
UTC	Utilities Telecom Council.
Waterfall	Waterfall Security Solutions, Ltd.
Wisconsin	Wisconsin Electric Power Company.

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Revised Critical Infrastructure Protection, Reliability Standards Docket No. RM15–14–002
(Issued July 21, 2016)
LaFLEUR, Commissioner *dissenting:*

In today's order, the Commission elects to proceed directly to a Final Rule and require the development of a new reliability standard on supply chain risk management for industrial control system hardware, software, and computing and networking services associated with bulk electric system operations. I fully support the Commission's continued attention to the threat of inadequate supply chain risk management procedures, which pose a very real threat to grid reliability.

However, in my view, the importance and complexity of this issue should guide the Commission to proceed cautiously and thoughtfully in directing the development of a reliability standard to address these threats. I am concerned that the Commission has not adequately considered or vetted the Final Rule, which could hamper the development and implementation of an effective, auditable, and enforceable standard. I believe that the more prudent course of action would be to issue today's Final Rule as a Supplemental Notice of Proposed Rulemaking (Supplemental NOPR), which would provide NERC, industry, and stakeholders the opportunity to comment on the Commission's proposed directives. Accordingly, and as discussed below, I dissent from today's order.[1]

I. The Commission's Decision To Proceed Directly to Final Rule Is Flawed and Could Delay Protection of the Grid Against Supply Chain Risks

Last July, as part of its NOPR addressing revisions to its cybersecurity critical infrastructure protection (CIP) standards, the Commission raised for the first time the prospect of directing the development of a standard to address risks posed by lack of controls for supply chain management.[2] The Commission indicated that new threats might warrant directing NERC to develop a standard to address those risks. While the Commission noted a variety of considerations that might shape the standard, including, among others, jurisdictional limits and the individualized nature of companies' supply chain management procedures, the Commission notably did not propose a specific standard for comment. Instead, the Commission sought comment on (1) the general proposal to require a standard, (2) the anticipated features of, and requirements that should be included in, such a standard, and (3) a reasonable timeframe for development of a standard.[3]

The record developed in comments responding to the Supply Chain NOPR and through the January 28, 2016 technical conference reflects a wide diversity of views regarding the need for, and possible content of, a reliability standard addressing supply chain management. Notwithstanding these diverse views, there was broad consensus on one point: That effectively addressing cybersecurity threats in supply chain management is tremendously complicated, due to a host of jurisdictional, technical, economic, and business relationship issues. Indeed, in the Supply Chain NOPR, the Commission recognized "that developing a supply chain management standard would likely be a significant undertaking and require extensive engagement with stakeholders to define the scope, content, and timing of the standard."[4]

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[1] I do agree with one holding in the order: That the Commission has authority under section 215 of the Federal Power Act to promulgate a standard on this issue.

[2] *Revised Critical Infrastructure Protection Reliability Standards,* Notice of Proposed Rulemaking, 80 FR 43,354 (July 22, 2015), 152 FERC ¶ 61,054 (2015). I will refer to the section of that order addressing supply chain issues as the "Supply Chain NOPR," and the remainder of the order as the "CIP NOPR."

[3] *Id.* P 66.

Yet, the Commission is proceeding straight to a Final Rule without in my view engaging in sufficient outreach regarding, or adequately vetting, the contents of the Final Rule. As to those contents, it is worth noting that the four objectives that will define the scope and content of the standard were not identified in the Supply Chain NOPR. Therefore, even though the Final Rule reflects feedback received on the Supply Chain NOPR, and is not obviously inconsistent with the Supply Chain NOPR, no party has yet had an opportunity to comment on those objectives or consider how they could be translated into an effective and enforceable standard.[5] This is a consequence of: (1) The lack of outreach on supply chain threats prior to issuing the Supply Chain NOPR; (2) the lack of detail in the Supply Chain NOPR regarding what a standard might look like; and (3) the decision today to proceed straight to a Final Rule rather than provide additional opportunities for public feedback.

A. The Commission and the Public's Consideration of Supply Chain Risks Would Benefit From Additional Stakeholder Engagement

First, I believe that meaningful stakeholder input on the content of any proposed rule is essential to the Commission's deliberative process. This is especially important in our reliability work, as any standard developed by NERC must be approved by stakeholder consensus before it may be filed at the Commission. I do not believe that the record developed to date establishes that the Final Rule will lead to an appropriate solution to address supply chain risks. I note that much of the feedback we received in response to the Supply Chain NOPR was not focused on the merits of particular approaches to address supply chain threats. Yet, in this order, the Commission directs the development of a standard based on objectives not reflected in the Supply Chain NOPR, depriving the public of the ability to comment, and the Commission of the benefit of that public comment.

In retrospect, given both the preliminary nature of the consideration of the issue and the lack of a concrete idea regarding what a proposed standard would look like, I believe that the Supply Chain NOPR was, in substance, a *de facto* Notice of Inquiry and should have been issued as such, rather than as a subsection of the broader CIP NOPR on changes to the CIP standards. For example, it is instructive to compare the Supply Chain NOPR with two other documents: (1) The Notice of Inquiry being issued today on cybersecurity issues arising from the recent incident in Ukraine,[6] and (2) the NOPR concerning the proposed development of a reliability standard to address geomagnetic disturbances.[7] The level of detail and consideration of the issues presented in the Supply Chain NOPR are much more consistent with that in a Notice of Inquiry than a traditional NOPR. As a result, I am concerned that the Commission, by styling its prior action as a NOPR, has skipped a critical step in the rulemaking process: The opportunity for public comment on its directive to develop a standard and the objectives that will frame the design and development of that standard. As explained below, I believe this procedural decision actually makes it less likely that an effective, auditable, and enforceable standard will be implemented on a reasonable schedule, particularly given the acknowledged complexity of this issue.[8]

B. The Lack of Adequate Stakeholder Engagement Will Have Negative Consequences for the Standards Development Process

I am also concerned about the consequences for the standards development process of the Commission's decision to proceed straight to a Final Rule. In particular, I am concerned that the combination of insufficient process and discussion to develop the record and inadequate time for standards development (since the Commission substantially truncated NERC's suggested timeline)[9] will handicap NERC's ability to develop an effective and enforceable proposed standard for the Commission to consider. As noted above, NERC, industry, and other stakeholders will have no meaningful opportunity before initiating their work to provide feedback on the contents of the rule, to seek clarification from the Commission, or to propose revisions to the rule. Yet, this type of feedback is a critical component of the rulemaking process, to ensure that the entities tasked with implementing the Commission's directive have been heard and understand what they are supposed to do. I believe that the Commission is essentially giving the standards development team a homework assignment without adequately explaining what it expects them to hand in.

I do not believe that the Final Rule's flexibility is a justification for proceeding straight to a Final Rule. Indeed, given the inadequate process to date, I fear that the flexibility is in fact a lack of guidance and will therefore be a double-edged sword. The Commission is issuing a general directive in the Final Rule, in the hope that the standards team will do what the Commission clearly could not do: translate general supply chain concerns into a clear, auditable, and enforceable standard within the framework of section 215 of the Federal Power Act. While the Commission need not be prescriptive in its standards directives, the Commission's order assumes that the standards development team will be able to take the "objectives" of the Final Rule and translate them into a standard that the Commission will ultimately find acceptable. I believe that issuing a Supplemental NOPR would benefit the standards development process by enabling additional discussion and feedback regarding the design of a workable standard.

C. By Failing To Engage in Adequate Stakeholder Outreach Before Directing Development of a Standard, the Commission Increases the Likelihood That Implementation of a Standard Will Be Delayed

A compressed and possibly compromised standards development process also has real consequences for the Commission's consideration of that proposed standard, whenever it is filed for our review. Unlike our authority under section 206 of the FPA, the Commission lacks authority under section 215 to directly modify a flawed reliability standard. Instead, to correct any flaws, the statute requires that we remand the standard to NERC and the standards development process.[10] Thus, notwithstanding the majority's desire to quickly proceed to Final Rule, the statutory construct constrains our ability to timely address a flawed standard, which could actually delay implementation of the protections the Commission seeks to put in place.

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[4] *Id.*

[5] To be clear, I am less concerned about whether the Final Rule satisfies minimal notice requirements than whether the Final Rule represents reasoned decision making by the Commission.

[6] *Cyber Systems in Control Centers*, Notice of Inquiry, Docket No. RM16–18–000.

[7] *Reliability Standards for Geomagnetic Disturbances*, Notice of Proposed Rulemaking, 77 FR 64,935 (Oct. 24, 2012), 141 FERC 61,045 (2012).

[8] I believe that *Reliability Standards for Physical Security Measures*, 146 FERC ¶ 61,166 (2014) (Physical Security Directive Order), which is cited in the Final Rule as support for today's action, is primarily relevant to demonstrate a different point than the order indicates. The Physical Security Directive Order followed focused outreach with NERC and other stakeholders to discuss how a physical security standard could be designed and implemented within the parameters of section 215 of the Federal Power Act. As a result of that outreach, the directives in the Physical Security Directive Order were clear, targeted, and reflected shared priorities between the Commission and NERC. Physical Security Directive Order, 146 FERC ¶ 61,166 at PP 6–9. Consequently, NERC was able to develop and file a physical security standard with the Commission in less than three months, and the Commission ultimately approved that standard in November 2014, only roughly eight months after directing its development. *Physical Security Reliability Standard*, 149 FERC ¶ 61,140 (2014). In my view, this example demonstrates how essential outreach is to the timely and effective development of NERC standards.

[9] In its comments responding to the Supply Chain NOPR, NERC requested that, if the Commission decides to direct the development of a standard, the Commission provide *a minimum* of two years for the standards development process. However, the Commission disregards that request and directs NERC to develop a standard in just one year, apparently based solely on the Trade Associations' request that the Commission allow *at least* one year for the standards development process. I believe this timeline is inconsistent with the Commission's own recognition of the complexity of this issue, and, as discussed herein, likely to delay rather than expedite the implementation of an effective, auditable, and enforceable standard.

[10] 18 U.S.C. 824o(d)(4).

Given the realities of the standards development and approval process, we are likely years away from a supply chain standard being implemented, even under the aggressive schedule contemplated in the order. I believe that the Commission should endeavor to provide as much advance guidance as possible before mandating the development of a standard, to increase the likelihood that NERC develops a standard that will be satisfactory to the Commission and reduce the need for a remand. I worry that the limited process that preceded the Final Rule and the expedited timetable will make it extremely difficult for NERC to file a standard that the Commission can cleanly approve. Had the Commission committed itself to conducting adequate outreach, I believe we could have mitigated the likelihood of that outcome, and more effectively and promptly addressed the supply chain threat in the long term. "Delaying" action for a few months thus would, in the long run, lead to prompter and stronger protection for the grid.

II. Conclusion

The choice the Commission faces today on supply chain risk management is not between action and inaction. Rather, given the importance of this issue, I believe that more considered action and a more developed Commission order, even if delayed by a few months, is better than a quick decision to "do something." Ultimately, an effective, auditable, and enforceable standard on supply chain management will require thoughtful consideration of the complex challenges of addressing cybersecurity threats posed through the supply chain within the structure of the FERC/NERC reliability process. In my view, the Commission gains very little and does not meaningfully advance the security of the grid by proceeding straight to a Final Rule, rather than taking the time to build a record to support a workable standard.

Accordingly, I respectfully dissent.

Cheryl A. LaFleur,
Commissioner.

[FR Doc. 2016–17842 Filed 7–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0011]

21 CFR Chapter I

Change of Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA or we) is amending our regulations to reflect a change in the address for the Center for Food Safety and Applied Nutrition (CFSAN). This action is editorial in nature and is intended to improve the accuracy of our regulations.

DATES: This rule is effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: John Reilly, Center for Food Safety and Applied Nutrition (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740.

SUPPLEMENTARY INFORMATION: We are amending our regulations in 21 CFR parts 1, 5, 70, 71, 73, 80, 100, 101, 102, 106, 107, 108, 109, 110, 112, 117, 118, 130, 161, 170, 171, 172, 173, 175, 176, 177, 178, 180, 181, 184, 189, 190, 211, 507, 701, 710, 720, and 1250 to reflect a change in the address for CFSAN. The street address listed currently in our regulations for CFSAN is 5100 Paint Branch Pkwy., College Park, MD 20740. The street has been renamed and the street number has been changed; the new street address is 5001 Campus Dr., College Park, MD 20740. Consequently, we are amending our regulations to reflect the new street address.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because we are merely updating the street address for CFSAN.

List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 70

Color additives, Cosmetics, Drugs, Labeling, Packaging and containers.

21 CFR Part 71

Administrative practice and procedure, Color additives, Confidential business information, Cosmetics, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

21 CFR Part 80

Color additives, Cosmetics, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 100

Administrative practice and procedure, Food labeling, Food packaging, Foods, Intergovernmental relations.

21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 102

Beverages, Food grades and standards, Food labeling, Frozen foods, Oils and fats, Onions, Potatoes, Seafood.

21 CFR Part 106

Food grades and standards, Infants and children, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 107

Food labeling, Infants and children, Nutrition, Reporting and recordkeeping requirements, Signs and symbols.

21 CFR Part 108

Administrative practice and procedure, Foods, Reporting and recordkeeping requirements.

21 CFR Part 109

Food packaging, Foods, Polychlorinated biphenyls (PCB's).

21 CFR Part 110

Food packaging, Foods.

21 CFR Part 112

Foods, Fruits and vegetables, Incorporation by reference, Packaging and containers, Recordkeeping requirements, Safety.

21 CFR Part 117

Food packaging, Foods.

21 CFR Part 118

Eggs and egg products, Incorporation by reference, Recordkeeping requirements, Safety.

21 CFR Part 130

Food additives, Food grades and standards.

21 CFR Part 161

Food grades and standards, Frozen foods, Seafood.

21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

21 CFR Part 171

Administrative practice and procedure, Food additives.

21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

21 CFR Part 173

Food additives.

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 176

Food additives, Food packaging.

21 CFR Part 177

Food additives, Food packaging.

21 CFR Part 178

Food additives, Food packaging.

21 CFR Part 180

Food additives.

21 CFR Part 181

Food additives, Food packaging.

21 CFR Part 184

Food additives.

21 CFR Part 189

Food additives, Food packaging.

21 CFR Part 190

Dietary foods, Foods, Food additives, Reporting and recordkeeping requirements.

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 507

Animal foods, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 701

Cosmetics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 710

Cosmetics.

21 CFR Part 720

Confidential business information, Cosmetics.

21 CFR Part 1250

Air carriers, Foods, Maritime carriers, Motor carriers, Public health, Railroads, Water supply.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 1, 5, 70, 71, 73, 80, 100, 101, 102, 106, 107, 108, 109, 110, 112, 117, 118, 130, 161, 170, 171, 172, 173, 175, 176, 177, 178, 180, 181, 184, 189, 190, 211, 507, 701, 710, 720, and 1250 are amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 1333, 1453, 1454, 1455, 4402; 19 U.S.C. 1490, 1491; 21 U.S.C. 321, 331, 332, 333, 334, 335a, 342i, 343, 350c, 350d, 350e, 352, 355, 360b, 360ccc, 360ccc–1, 360ccc–2, 362, 371, 373, 374, 381, 382, 387, 387a, 387c, 393; 42 U.S.C. 216, 241, 243, 262, 264.

■ 2. In part 1, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 5—ORGANIZATION

■ 3. The authority citation for part 5 continues to read as follows:

Authority: 5 U.S.C. 552; 21 U.S.C. 301–397.

■ 4. In part 5, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 70—COLOR ADDITIVES

■ 5. The authority citation for part 70 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 360b, 361, 371, 379e.

■ 6. In part 70, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 71—COLOR ADDITIVE PETITIONS

■ 7. The authority citation for part 71 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 351, 355, 360, 360b–360f, 360h-360j, 361, 371, 379e, 381; 42 U.S.C. 216, 262.

■ 8. In part 71, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 9. The authority citation for part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

■ 10. In part 73, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 80—COLOR ADDITIVE CERTIFICATION

■ 11. The authority citation for part 80 continues to read as follows:

Authority: 21 U.S.C. 371, 379e.

■ 12. In part 80, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 100—GENERAL

■ 13. The authority citation for part 100 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 337, 342, 343, 348, 371.

■ 14. In part 100, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 101—FOOD LABELING

■ 15. The authority citation for part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 16. In part 101, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

■ 17. The authority citation for part 102 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 371.

■ 18. In part 102, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 106—INFANT FORMULA REQUIREMENTS PERTAINING TO CURRENT GOOD MANUFACTURING PRACTICE, QUALITY CONTROL PROCEDURES, QUALITY FACTORS, RECORDS AND REPORTS, AND NOTIFICATIONS

■ 19. The authority citation for part 106 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 350a, 371.

■ 20. In part 106, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 107—INFANT FORMULA

■ 21. The authority citation for part 107 continues to read as follows:

Authority: 21 U.S.C. 321, 343, 350a, 371.

■ 22. In part 107, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 108—EMERGENCY PERMIT CONTROL

■ 23. The authority citation for part 108 continues to read as follows:

Authority: 21 U.S.C. 342, 344, 371.

■ 24. In part 108, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD–PACKAGING MATERIAL

■ 25. The authority citation for part 109 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 342, 346, 346a, 348, 371.

■ 26. In part 109, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 110—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING HUMAN FOOD

■ 27. The authority citation for part 110 continues to read as follows:

Authority: 21 U.S.C. 342, 371, 374; 42 U.S.C. 264.

■ 28. In part 110, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 112—STANDARDS FOR THE GROWING, HARVESTING, PACKING, AND HOLDING OF PRODUCE FOR HUMAN CONSUMPTION

■ 29. The authority citation for part 112 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 342, 350h, 371; 42 U.S.C. 243, 264, 271.

■ 30. In part 112, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 117—CURRENT GOOD MANUFACTURING PRACTICE, HAZARD ANALYSIS, AND RISK–BASED PREVENTIVE CONTROLS FOR HUMAN FOOD

■ 31. The authority citation for part 117 continues to read as follows:

Authority: 21 U.S.C. 331, 342, 343, 350d note, 350g, 350g note, 371, 374; 42 U.S.C. 243, 264, 271.

■ 32. In part 117, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 118—PRODUCTION, STORAGE, AND TRANSPORTATION OF SHELL EGGS

■ 33. The authority citation for part 118 continues to read as follows:

Authority: 21 U.S.C. 321, 331–334, 342, 371, 381, 393; 42 U.S.C. 243, 264, 271.

■ 34. In part 118, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 130—FOOD STANDARDS: GENERAL

■ 35. The authority citation for part 130 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 341, 343, 371.

■ 36. In part 130, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 161—FISH AND SHELLFISH

■ 37. The authority citation for part 161 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 38. In part 161, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 170—FOOD ADDITIVES

■ 39. The authority citation for part 170 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 346a, 348, 371.

■ 40. In part 170, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 171—FOOD ADDITIVE PETITIONS

■ 41. The authority citation for part 171 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

■ 42. In part 171, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 43. The authority citation for part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 44. In part 172, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

■ 45. The authority citation for part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 46. In part 173, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

■ 47. The authority citation for part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

■ 48. In part 175, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

■ 49. The authority citation for part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

■ 50. In part 176, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

■ 51. The authority citation for part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

■ 52. In part 177, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

■ 53. The authority citation for part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

■ 54. In part 178, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 180—FOOD ADDITIVES PERMITTED IN FOOD OR IN CONTACT WITH FOOD ON AN INTERIM BASIS PENDING ADDITIONAL STUDY

■ 55. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 343, 348, 371; 42 U.S.C. 241.

■ 56. In part 180, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 181—PRIOR–SANCTIONED FOOD INGREDIENTS

■ 57. The authority citation for part 181 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

■ 58. In part 181, revise all references to “5100 Paint Branch Pkwy.” to read “5001 Campus Dr.”.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

■ 59. The authority citation for part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

■ 60. In part 184, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

■ 61. The authority citation for part 189 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371, 381.

■ 62. In part 189, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 190—DIETARY SUPPLEMENTS

■ 63. The authority citation for part 190 continues to read as follows:

Authority: Secs. 201(ff), 301, 402, 413, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff), 331, 342, 350b, 371).

■ 64. In part 190, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

■ 65. The authority citation for part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 360b, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

■ 66. In part 211, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 507—CURRENT GOOD MANUFACTURING PRACTICE, HAZARD ANALYSIS, AND RISK-BASED PREVENTIVE CONTROLS FOR FOOD FOR ANIMALS

■ 67. The authority citation for part 507 continues to read as follows:

Authority: 21 U.S.C. 331, 342, 343, 350d note, 350g, 350g note, 371, 374; 42 U.S.C. 243, 264, 271.

■ 68. In part 507, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 701—COSMETIC LABELING

■ 69. The authority citation for part 701 continues to read as follows:

Authority: 21 U.S.C. 321, 352, 361, 362, 363, 371, 374; 15 U.S.C. 1454, 1455.

■ 70. In part 701, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 710—VOLUNTARY REGISTRATION OF COSMETIC PRODUCT ESTABLISHMENTS

■ 71. The authority citation for part 710 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

■ 72. In part 710, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT COMPOSITION STATEMENTS

■ 73. The authority citation for part 720 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

■ 74. In part 720, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

PART 1250—INTERSTATE CONVEYANCE SANITATION

■ 75. The authority citation for part 1250 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 264, 271.

■ 76. In part 1250, revise all references to "5100 Paint Branch Pkwy." to read "5001 Campus Dr.".

Dated: July 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17658 Filed 7–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1206 and 1210

[Docket No. ONRR–2014–0001; DS63642000 DR2PS0000.CH7000167D0102R2]

Amendments to Designated Areas

AGENCY: Office of the Secretary, Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Final rule.

SUMMARY: ONRR convened two technical conferences on November 20, 2015 to discuss amending the boundaries of four of the designated areas it uses to calculate the index-based major portion prices in its regulations. At the technical conferences, the participants discussed issues regarding the appropriate boundary line between the North Fort Berthold and South Fort Berthold Designated Areas and adding additional counties to one or both of the two designated areas in the Uintah and Ouray Reservation.

DATES: *Effective:* September 1, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dawson, ONRR, telephone at (303) 231–3653, or email to *lisa.dawson@onrr.gov.*

SUPPLEMENTARY INFORMATION: With this final rule, ONRR amends the four designated areas to define them as follows:

1. North Fort Berthold—all lands within the Fort Berthold Reservation boundary north of the Missouri River, including the Turtle Mountain public domain lease lands north of the Missouri River that the Fort Berthold Agency of the Bureau of Indian Affairs (BIA) administers, with the dividing line of the Missouri River being the county lines that follow the Missouri River.
2. South Fort Berthold—all lands within the Fort Berthold Reservation boundary south of the Missouri River, including the Turtle Mountain public domain lease lands south of the Missouri River that the Fort Berthold Agency of the BIA administers, with the dividing line of the Missouri River being the county lines that follow the Missouri River.
3. Uintah & Ouray—Emery, Uintah, and Grand Counties.
4. Uintah & Ouray—Duchesne, Wasatch, and Carbon Counties.

Under the new Indian Oil Valuation Amendments to 30 CFR 1206.54 (80 FR 24794 dated May 1, 2015), ONRR uses designated areas to calculate index-based major portion prices for lessees to comply with the major portion provisions in their leases. Designated areas are those areas ONRR identifies as unique based on their location and the crude type produced from their respective Indian lands.

When ONRR proposed the new Indian Oil Valuation Amendments, it proposed sixteen initial designated areas. Generally, these designated areas were the Indian reservation boundaries. However, there were five designated areas which were not the reservation boundaries: Oklahoma; North Fort Berthold; South Fort Berthold; Uintah & Ouray: Uintah and Grand Counties; and Uintah and Ouray: Duchesne County.

Under the new Indian Oil Valuation Amendments, to modify or change an existing designated area, ONRR must convene a technical conference. In implementing the new Indian Oil Valuation Amendments, ONRR discovered two potential issues. First, the preamble describes the dividing line between the North Fort Berthold Designated Area and the South Fort Berthold Designated Area as the Little Missouri River. Second, ONRR found at least one producing Indian lease that is in Wasatch County in the Uintah and Ouray Reservation, which is outside of both of the designated areas listed in the Uintah and Ouray Reservation. ONRR also identified two other counties—Carbon and Emery Counties—in the Uintah and Ouray Reservation that were not in the listed designated areas that do not currently have Indian leases but could in the future.

To address these issues, ONRR held two technical conferences. ONRR published notice of the technical conferences in the **Federal Register** on October 29, 2015. 80 FR 66417. The first technical conference was held in person on November 20, 2015, at 9:00 a.m., Mountain Time in Denver, Colorado, at the Office of Natural Resources Revenue, Denver Federal Center, 6th Avenue and Kipling Street, Building 85, Auditoriums A–D, Denver, Colorado 80226. The second technical conference was a teleconference on November 20, 2015, at 2:00 p.m. Mountain Time. Fifteen people attended the technical conferences, of which seven were from ONRR, three from Tribes, and five from industry.

ONRR also solicited comments on the proposed changes through November 30, 2015. On February 17, 2016, ONRR consulted with the Ute Indian Tribe on adding the Wasatch, Carbon, and Emery Counties to the two Uintah and Ouray Designated Areas. Also, on March 4, 2016, ONRR consulted with representatives of the Three Affiliated Tribes on changing the boundary line between the North Fort Berthold and South Fort Berthold Designated Areas.

Public Comments: Generally, the parties attending the technical conference and consultations agreed with ONRR's proposal to modify the definition of the (1) Uintah and Ouray Designated Areas to include Wasatch, Carbon, and Emery Counties; and (2) North Fort Berthold and South Fort Berthold Designated Areas to use the Missouri River as the boundary line between the two designated areas rather than the Little Missouri River. ONRR received three additional comments: One from industry, one from an individual Indian mineral owner, and one from a Tribe.

Public Comment: The individual Indian mineral owner sent a comment stating he did not support dividing the Fort Berthold Reservation into two designated areas for five reasons: (1) The idea of selling price by field is an anachronism; (2) the price must be the highest in the world wherever that may be because industry uses the tax code, hedging, swaps, etc. in order to obtain the highest price; (3) this attempt to reduce price is a taking under Hodel because this regulation denies the beneficiary the difference between the market rate and major portion; (4) there is no basis for allowing a transportation deduction because typical carriers charge consumers for transportation rather than the mineral owner; and (5) North Dakota recovered millions because deductions were not in their leases and, likewise, Indian leases do not authorize this illegality.

ONRR Response: The technical conference was simply to discuss amending the Fort Berthold designated areas to use the Missouri River rather than the Little Missouri River to divide the two designated areas. These comments apply to the Indian Oil Valuation Amendments as a whole and do not directly relate to the appropriate boundary for the two Fort Berthold designated areas. ONRR addressed comments similar to the one above in the preamble of the final rule, which can be found at 80 FR 24,794 (May 1, 2015).

Public Comment: The industry commenter suggested that ONRR take this opportunity to divide the Fort Berthold Reservation into three designated areas: The first designated area would include lands north of the Missouri River, the second would include the lands south of the Missouri River and north of the Little Missouri River, and the third would include the lands south of the Little Missouri River. The commenter believes the available transportation infrastructures support dividing the Fort Berthold Reservation into three designated areas because the lands north of the Little Missouri River have evolving pipeline facilities that can transport production from the lease, whereas leases south of the Little Missouri River do not have the same available infrastructure.

ONRR Response: Dividing the Fort Berthold into two designated areas was a compromise negotiated by the Indian Oil Negotiated Rulemaking Committee (Committee). Generally, industry advocated using specific fields as designated areas. Alternatively, Tribes and individual Indian mineral owners promoted a broader area. Ultimately, the Committee agreed to divide Fort Berthold into two designated areas as a compromise. To date, ONRR has found no reason to ignore the conclusions of the Committee.

The final rule and the preamble of the proposed rule specifically allow lessees/operators, Tribes, and Indian mineral owners to petition ONRR to convene a technical conference to review, modify, or add designated areas where there is a significant change that affects the location and quality differentials. The rule has not yet been in effect for a period of time sufficient to demonstrate that there has been a significant change in the market on the Fort Berthold Reservation. Should the markets change in the future, the lessees/operators, Tribes, or individual Indian mineral owners can petition ONRR to change the designated areas in the future. The purpose of this technical conference was to change the boundary between the two Fort Berthold designated areas, not to add another designated area. Therefore, adding a designated area was outside the scope of this technical conference.

Public Comment: The Ute Indian Tribe indicated it would prefer to have Wasatch and Carbon Counties added to the Uintah & Ouray–Duchesne County Designated Area and Emery County added to the Uintah & Ouray–Grand and Uintah Counties Designated Area. The Tribe indicated the infrastructure on the Uintah & Ouray Reservation supported this configuration.

ONRR Response: ONRR agrees with this comment and has modified the definition of the two designated areas in the Uintah and Ouray Reservation by adding Wasatch and Carbon Counties to the Uintah & Ouray–Duchesne County Designated Area and Emery County the Uintah & Ouray–Grand and Uintah Counties Designated Area.

Dated: June 28, 2016.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2016–17599 Filed 7–28–16; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0668]

Drawbridge Operation Regulation; James River, Hopewell, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the SR 156/Benjamin Harrison Memorial Bridge across the James River, mile 65.0, at Hopewell, VA. The deviation is necessary to facilitate bridge maintenance and repairs. This deviation

allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective without actual notice from July 29, 2016 through 6 a.m. on Friday, September 30, 2016. For the purposes of enforcement, actual notice will be used from 8 p.m. on Monday, July 25, 2016, until July 29, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0668] is available at *http://www.regulations.gov*. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Virginia Department of Transportation, who owns and operates the SR 156/ Benjamin Harrison Memorial Bridge across the James River, mile 65.0, at Hopewell, VA, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.5, to facilitate replacement of the service elevators for both lift towers, install new electrical wiring, bird screens, and structural steel of the bridge. Under this temporary deviation, the bridge will be in the closed-to-navigation position from 8 p.m. to 6 a.m.; Monday through Thursday; July 25, 2016 to July 29, 2016; August 1, 2016 to August 5, 2016; September 5, 2016 to September 9, 2016; September 12, 2016 to September 16, 2016; and alternative dates from September 19, 2016 to September 23, 2016; and September 26, 2016 to September 30, 2016. The bridge will open for vessels on signal during scheduled closure periods, if at least 24 hours notice is given. The bridge is a vertical lift bridge has a vertical clearance of 50 feet in the closed-to-navigation position above mean water.

The James River is used by a variety of vessels including deep-draft vessels, tug and barge traffic, and recreational vessels. The Coast Guard has carefully coordinated the restrictions with waterway users in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at anytime. The bridge will be able to open for emergencies during scheduled closure periods, if at least 30 minutes notice is given. The Coast Guard will also inform the users of the waterway through our Local Notice and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 25, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–17976 Filed 7–28–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0129; FRL–9949–65–Region 4]

Air Plan Approval; Alabama: Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Alabama State Implementation Plan (SIP) submitted by the Alabama Department of Environmental Management (ADEM) on October 26, 2015. The revision modifies the definition of "volatile organic compounds" (VOC). Specifically, the revision adds three compounds to the list of those excluded from the VOC definition on the basis that these compounds make a negligible contribution to tropospheric ozone formation. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective September 27, 2016 without further notice, unless EPA receives adverse comment by August 29, 2016. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0129 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8726. Mr. Wong can also be reached via electronic mail at *wong.richard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Tropospheric ozone, commonly known as smog, occurs when VOC and nitrogen oxides (NO_X) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, EPA and state governments limit the amount of VOCs and NO_X that can be released into the atmosphere. VOC are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) that form ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed or do not form ozone to the same extent.

Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of "VOC," and hence what compounds shall be treated as VOC for regulatory purposes. It has been EPA's policy that compounds of carbon with negligible reactivity need not be regulated to reduce ozone and should be excluded from the regulatory definition of VOC. *See* 42 FR 35314 (July 8, 1977), 70 FR 54046 (September 13, 2005). EPA determines whether a given carbon compound has "negligible" reactivity by comparing the compound's reactivity to the reactivity of ethane. EPA lists these compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The chemicals on this list are often called "negligibly reactive." EPA may periodically revise the list of negligibly reactive compounds to add or delete compounds.

EPA issued final rules approving the addition of three compounds to the list of those compounds excluded from the regulatory definition of VOC. The three compounds are: trans 1-chloro-3,3,3-trifluoroprop-1-ene (Solstice™ 1233zd(E)), 78 FR 53029 (August 28, 2013); 2,3,3,3-tetrafluoropropene, 78 FR 62451 (October 22, 2013); and 2-amino-2-methyl-1-propanol (AMP), 79 FR 17037 (March 27, 2014). Alabama is updating its SIP to be consistent with those changes to federal regulations.

II. Analysis of State's Submittal

On October 26, 2015, ADEM submitted a SIP revision [1] to EPA for review and approval. The revision modifies the definition of VOC found at Alabama Administrative Code section 335–3–1–.02(gggg). Specifically, the revision adds three compounds—trans 1-chloro-3,3,3-trifluoroprop-1-ene (Solstice™ 1233zd(E)); 2,3,3,3-tetrafluoropropene; and 2-amino-2-methyl-1-propanol (AMP)—to the list of those excluded from the VOC definition on the basis that each of these compounds makes a negligible contribution to tropospheric ozone formation.

These changes are consistent with section 110 of the CAA and meet the regulatory requirements pertaining to SIPs. Pursuant to CAA section 110(l), the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. The revision to Rule 335–3–1–.02(gggg) is approvable under section 110(l) because it reflects changes to federal regulations based on findings that the three aforementioned compounds are negligibly reactive.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Alabama Regulation section 335–3–1–.02 "Definitions," effective November 24, 2015, which revised the definition of VOC. Therefore, this material has been approved by EPA for inclusion in the State implementation plan, has been incorporated by reference by EPA into that plan, is fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

IV. Final Action

Pursuant to section 110 of the CAA, EPA is approving the revision to the Alabama SIP changing the VOC definition. EPA has evaluated Alabama's October 26, 2015, submittal and has determined that it meets the applicable requirements of the CAA and EPA regulations and is consistent with EPA policy.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 27, 2016 without further notice unless the Agency receives adverse comments by August 29, 2016.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 27, 2016 and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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[1] Alabama's October 26, 2015, submission to EPA also included changes to Alabama Administrative Code Chapters 335–3–5 and 335–3–8 to implement EPA's Cross-State Air Pollution Rule and changes to the State's Regional Haze Plan. EPA is not taking action on those changes at this time. In addition, Alabama's October 26, 2015, submission included changes to Chapters 335–3–10 (New Source Performance Standards (NSPS)) and 335–3–11 (National Emissions Standards for Hazardous Air Pollutants (NESHAP)). The NSPS and NESHAP are not part of the federally approved Alabama SIP, thus EPA is not taking any action regarding Chapters 335–3–10 and 335–3–11 in today's rulemaking.

[2] 62 FR 27968 (May 22, 1997).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 15, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

■ 2. Section 52.50(c) is amended by revising the entry for "Section 335–3–1–.02" to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA Approved Alabama Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
	Chapter 335–3–1—General Provisions			
*	*	*	*	*
Section 335–3–1–.02	Definitions	11/24/2015	7/29/2016 [Insert **Federal Register** citation].	Revised paragraph (gggg) (definition of "VOC")
*	*	*	*	*

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[FR Doc. 2016–17815 Filed 7–28–16; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 81, No. 146
Friday, July 29, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–6271; Airspace Docket No. 16–AGL–15]

Proposed Establishment of Class E Airspace; Iron Mountain, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E en route airspace around the Iron Mountain VHF omnidirectional range/distance measuring equipment, Iron Mountain, MI. This action would add additional airspace to facilitate the vectoring of Instrument Flight Rules (IFR) aircraft under control of the Minneapolis Air Route Traffic Control Center (ARTCC) in the Great Lakes area located north and northwest of the Iron Mountain, MI, VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) navigation aid. This proposed action would enhance the safety and management of aircraft operations within the National Airspace System (NAS).

DATES: Comments must be received on or before September 12, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2016–6271; Docket No. 16–AGL–15, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Raul Garza Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace in the Iron Mountain, MI area.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–6271/Airspace Docket No. 16–AGL–15." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Central Service Center, Operation Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists

Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) Part 71 by amending Class E en route airspace in the Iron Mountain, MI, area, for the Iron Mountain VOR/DME. The FAA is proposing to add additional controlled airspace to the southern and northern boundaries of the Iron Mountain en route airspace area, and remove exclusionary information from the regulatory text. This proposed action would provide controlled airspace enabling Minneapolis ARTCC greater latitude to use radar vectors and altitude changes within the entire area north and northwest of the Iron Mountain, MI, VOR/DME and remove unnecessary exclusion language for clarity.

The FAA also would amend Class E airspace extending upward from 700 feet above the surface at Iron Mountain, MI, to reflect the name change of the navigation aid from Iron Mountain VORTAC to Iron Mountain VOR/DME.

Class E airspace areas are published in Sections 6005 and 6006, respectively, of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

AGL MI E6 Iron Mountain, MI [Amended]

Iron Mountain VOR/DME, MI
(Lat. 45°48′58″ N., long. 088°06′44″ W.)
Thunder Bay Airport, ON, Canada
(Lat. 48°22′19″ N., long. 089°19′26″ W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 47°05′00″ N., long. 086°40′39″ W.; to lat. 47°05′00″ N., long. 088°27′44″ W.; to the Iron Mountain VOR/DME; to lat. 46°16′21″ N., long. 089°47′13″ W.; to lat. 46°52′34″ N., long. 090°13′09″ W. on the eastern boundary of the Wisconsin E5 airspace area; then northeast along the boundary of the Wisconsin and Minnesota E5 airspace areas to the intersection of the 35 NM radius of the Thunder Bay Airport; then counterclockwise along the 35 NM radius of the Thunder Bay Airport to the intersection of the southern boundary of the Upper Peninsula E6 airspace area; then southeast along the boundary of the Upper Peninsula E6 airspace area to the point of beginning.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Iron Mountain, MI [Amended]

Iron Mountain/Kingsford, Ford Airport, MI
(Lat. 45°49′06″ N., long. 88°06′52″ W.)
Iron Mountain VOR/DME
(Lat. 45°48′58″ N., long. 88°06′44″ W.)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of Iron Mountain VOR/DME, and within 5.2 miles west and 8.3 miles east of the Iron Mountain ILS localizer south course extending from the 8.7-mile radius to 21 miles south of the Iron Mountain/Kingsford, Ford Airport, and within 4.4 miles each side of the Iron Mountain ILS localizer north course extending from the 8.7-mile radius to 16 miles north of the airport.

Issued in Fort Worth, TX, on July 18, 2016.

Vonnie L. Royal,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–17893 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. DOT–OST–2015–0246]

RIN 2105–AE12

Nondiscrimination on the Basis of Disability in Air Travel: Negotiated Rulemaking Committee Fourth Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of fourth public meeting of advisory committee.

SUMMARY: This notice announces the fourth meeting of the Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee).

DATES: The fourth meeting of the ACCESS Advisory Committee will be held on August 16 and 17, from 9:00 a.m. to 5:00 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the Crystal City Marriott at Reagan National Airport, 1999 Jefferson Davis Highway Arlington, Virginia 22202. Attendance is open to the public up to the room's capacity of 150 attendees. Since space is limited, any member of the general public who plans to attend this meeting must notify the registration contact identified below no later than August 9, 2016.

FOR FURTHER INFORMATION CONTACT: To register to attend the meeting, please contact Kyle Ilgenfritz (*kilgenfritz@linkvisum.com;* 703–442–4575 extension 128). For other information, please contact Livaughn Chapman or Vinh Nguyen, Office of the Aviation Enforcement and Proceedings, U.S. Department of Transportation, by email at *livaughn.chapman@dot.gov* or *vinh.nguyen@dot.gov* or by telephone at 202–366–9342.

SUPPLEMENTARY INFORMATION:

I. Fourth Public Meeting of the ACCESS Committee

The fourth meeting of the ACCESS Advisory Committee will be held on August 16 and 17, 2016, from 9:00 a.m. to 5:00 p.m., Eastern Daylight Time. The meeting will be held at the Crystal City Marriott at Reagan National Airport, 1999 Jefferson Davis Highway Arlington, Virginia 22202. At the meeting, the ACCESS Advisory Committee will continue to address whether to require accessible inflight entertainment (IFE) and strengthen accessibility requirements for other in-flight communications, whether to require an accessible lavatory on new single-aisle aircraft over a certain size, and whether to amend the definition of "service animals" that may accompany passengers with a disability on a flight. This meeting will include reports from the working groups formed to address the three issues listed above. We expect that the working groups may present proposals to amend the Department's disability regulation on one or more of these issues. Prior to the meeting, the agenda will be available on the ACCESS Advisory Committee's Web site, *www.transportation.gov/access-advisory-committee.* Information on how to access advisory committee documents via the FDMC is contained in Section III, below.

The meeting will be open to the public. Attendance will be limited by the size of the meeting room (maximum 150 attendees). Because space is limited, we ask that any member of the public who plans to attend the meeting notify the registration contact, Kyle Ilgenfritz (*kilgenfritz@linkvisum.com;* 703–442–4575 extension 128) at Linkvisum, no later than August 9, 2016. At the discretion of the facilitator and the Committee and time permitting, members of the public are invited to contribute to the discussion and provide oral comments.

II. Submitting Written Comments

Members of the public may submit written comments on the topics to be considered during the meeting by August 9, 2016, to FDMC, Docket Number DOT–OST–2015–0246. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. DOT recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that DOT can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, DOT–OST–2015–0246, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

III. Viewing Comments and Documents

To view comments and any documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov.* Enter the docket number, DOT–OST–2015–0246, in the keyword box, and click "Search." Next, click the link to "Open Docket Folder" and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

IV. ACCESS Advisory Committee Charter

The ACCESS Advisory Committee is established by charter in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. Secretary of Transportation Anthony Foxx approved the ACCESS Advisory Committee charter on April 6, 2016. The committee's charter sets forth policies for the operation of the advisory committee and is available on the Department's Web site at *www.transportation.gov/office-general-counsel/negotiated-regulations/charter.*

V. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

VI. Future Committee Meetings

DOT anticipates that the ACCESS Advisory Committee will have two additional two-day meetings in Washington, DC The meetings are tentatively scheduled for following dates: fifth meeting, September 22–23, and the sixth and final meeting, October 13–14. Notices of all future meetings will be published in the **Federal Register** at least 15 calendar days prior to each meeting.

Notice of this meeting is being provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations covering management of Federal advisory committees. *See* 41 CFR part 102–3.

Issued under the authority of delegation in 49 CFR 1.27(n).

Dated: July 22, 2016.

Molly J. Moran,

Acting General Counsel.

[FR Doc. 2016–17967 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Chapter III

[Docket No.: 160606489–6489–01]

RIN 0625–AB07

Clarification and Update of the Trade Fair Certification Program

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The U.S. Department of Commerce (Commerce) is intending to update the Trade Fair Certification Program, which recognizes and endorses U.S. participation in selected, privately organized, foreign trade fairs, in the coming months. Proposed changes will be announced through the **Federal Register** and comments will be solicited and reviewed before a final rule is issued. This ANPRM solicits feedback on some of the concepts Commerce is considering for the update, and reiterates the requirements, procedures, and application review criteria of the current Trade Fair Certification Program, originally published April 30, 1993. The purpose of this document is to reiterate existing terms in the 1993 document in order to inform the public of proposed guidelines. The concepts being considered for updating the program can be found in the last section of the Supplementary Information section of this document.

DATES: Comments on the proposed changes to the Program are due 20 days upon the date of publication in the **Federal Register**.

ADDRESSES: You may submit comments, identified by the regulations.gov docket number ITA–2016–0005, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=ITA-2016-0005* click the "Comment Now" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Vidya Desai, Senior Advisor, Trade Promotion Programs, U.S. Department of Commerce, 1300 Pennsylvania Ave NW., Mezzanine Level Suite 800, Washington, DC 20004.

Instructions: You must submit comments by one of the above methods to ensure that Commerce Department receives the comments and considers them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

Commerce Department will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Senior Advisor, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, 1300 Pennsylvania Ave. NW., Ronald Reagan Building, Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004; Telephone (202) 482–2311; Facsimile: (202) 482–7800; Email: *tfc@trade.gov.*

SUPPLEMENTARY INFORMATION: A summary of the points from the 1993 document (58 FR 26116, April 30, 1993) in this document are below in Section I. However, comments are specifically being requested on Potential Concepts for Program Changes found in Section II.

Section I: Summary

- A $2,000 non-refundable participation fee[1] is required within 10 days of notification of Certification. This fee covers support from the local U.S. & Foreign Commercial Service (USFCS) office in the location of the fair, logistical and organizational services from the Trade Fair Certification staff at headquarters, and support provided by Commerce staff and resources generally. Additional value added services, such as coordination of business to government meetings, will be assessed an additional fee determined based on the costs attributed to coordinating such services and having the appropriate Commerce staff present to fulfill such activities.
- Applications must be received no later than 9 months prior to the commencement of the fair for which Certification is sought, but no earlier than the conclusion of the prior event.
- Overseas trade fairs must commit to recruiting a minimum of 10 U.S. exhibitors for Trade Fair Certification consideration.
- The USFCS logo will be authorized for use by a Certified Trade Fair to aid in recruitment of U.S. exhibitors.
- For fairs occurring in cities or locales where there is no USFCS Office, or where the Commerce staff responsible for the industry theme of such if fair is not local, the presence of Commerce staff at the fair may be considered a value added service and incur additional fees for the organizer.
- First time and horizontal fairs are not eligible for Certification.
- Applicants applying for Certification of an existing trade fair must have experience in recruiting U.S. exhibitors for that show or another show with the same industry theme.
- Applications for Certification must include satisfactory documentation, in English, of the commitment of necessary exhibit space by the owner or lessor of the facility in which the fair will be held. Documentation should consist of: (1) A lease or letter from the owner or lessor stating that the applicant holds the necessary exhibition space, or (2) a letter demonstrating an offer of specific exhibition space by the owner or lessor of the facility; and a letter indicating the applicant's acceptance of the terms.
- Only applications submitted by U.S. persons or entities will be considered. For this purpose, the U.S. subsidiary, branch or agent of a foreign firm is considered a U.S. person or entity. Applications for fairs in which the applicant does not lease exhibit space directly, but relies on their parent foreign fair organizer to obtain exhibit space, must be submitted by the foreign fair organizer and co-signed by the U.S. subsidiary, branch or agent.
- Certified fair organizers must provide a list of recruited U.S. exhibitors to the Commerce Project Officer. The list should include the exhibitor's name, address, products displayed and the name, email address and phone number of the exhibitor's international sales contact.[2] The list must be received 45 days prior to the event.
- In order for the fair organizer to consider a participant a U.S. exhibitor, the participant must be (1) a U.S. citizen, U.S. corporation, or a foreign corporation that is more than 95% U.S.-owned and (2) the products it exhibits at the fair must be: (a) manufactured or produced in the United States, or (b) if manufactured or produced outside of the United States, marketed under the name of a U.S. firm and have U.S. content representing at least fifty-one percent of the value of the finished good or service.

The following reiterates the Trade Fair Certification (TFC) Program as set out in 58 FR 26116 of April 30, 1993:

The Department of Commerce established the TFC Program in 1983 to encourage qualified private sector fair organizers to recruit U.S. exhibitors for overseas trade fairs. The Program provides the private sector with greater opportunities to work with Commerce in support of U.S. participation in overseas trade fairs. Private sector organizers of a Certified Trade Fair assume the responsibilities of organizing the fair, or U.S. participation in it. Certification assures the private sector organizer of Commerce recognition and support of its efforts to recruit U.S. exporters.

Certification provides a means for U.S. exporters to verify that a particular trade fair will be a good promotional medium providing good export opportunities. Prospective U.S. exhibitors at Certified Trade Fairs know that Commerce personnel will be available to assist them and to counsel them about export matters that may arise before, during or after the show. Certification thus indirectly serves the U.S. manufacturer or service provider seeking export opportunities.

Certification is for one fair only; fairs that have been certified previously must apply for certification again for any future anticipated event. This allows Commerce to evaluate the latest market conditions in determining whether to certify each fair. Commerce does not provide any financial assistance to organizers or to exhibitors at Certified Trade Fairs.

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[1] While the level of this fee is not reflected in the TFC document, 58 FR 26116 of April 30, 1993, it has continually been announced to the public on the Web page Trade Fair Certification Program Description & Benefits at *http://export.gov/tradefairs/eg_main_018560.asp.*

[2] If disclosure of this information is in violation of an organization's written privacy policy agreement with its members, the Show Organizer may opt out of providing this information.

There is no fee required to submit an application. If Certification is approved, a participation fee of $2,000 is required. The participation fee is due within 10 days of notification of acceptance into the program.

Certification indicates that Commerce has found the applicable fair to be a good export opportunity warranting participation by U.S. exporters. Certification indicates that the fair and the organizer have met basic criteria and that the organizer is qualified to perform in a manner supportive of Commerce's objectives. However, Certification does not constitute a guarantee of the fair's success or of the organizer's or exhibitor's performance. Commerce limits Certification to fairs that in its judgment, most clearly meet the program objectives and selection criteria set out herein.

Eligibility: All international/overseas trade events are eligible to apply for Trade Fair Certification, through a U.S. agent (person or entity).

Exclusions: Trade shows that are either first-time or horizontal (non-industry specific) events generally will not be considered. For the purposes of the TFC program, a first-time fair is a distinct, separate trade fair that has not been held before in the relevant country. The term "first-time event" does not refer to a fair different in name only from a previous, identical fair. A fair developed for the first time as a "breakout" from an existing trade fair will be considered a first-time fair. Applications for a fair that occurs in different countries on a rotating basis under the same title will be considered provided the fair has occurred in the relevant country during the preceding five years.

General Evaluation Criteria: Commerce will evaluate shows for Trade Fair Certification using the following criteria:

(a) The fair must be a good export opportunity for the featured industry or industries. The fair must have good potential for U.S. export promotion. In applying this criterion, Commerce will consider such factors as: Whether the fair's industry theme is included in Commerce's Top Market reports, Country Commercial Guides, and input from US&FCS offices in the relevant region;

(b) The degree to which the fair provides promise of foreign market exposure for the latest technology or techniques in an industry or in a commercially recognized category of goods or services in the sector or field promoted by the fair;

(c) Whether the fair provides a unique opportunity for export promotion within a particular market;

(d) The appropriateness of the fair for a minimum of 10 U.S. exhibitors, ideally located in an identifiable U.S. pavilion within the show; and

(e) Whether U.S. exhibitors are likely to exhibit goods or services representing U.S. industry in the particular field involved.

(f) The theme, timing and location of the fair; previous exhibitors' experience with the organizer; the USFCS office's familiarity with the fair (and if applicable, its recommendation in its end-of-show report for the previous event); and whether Commerce's support would contribute to the enhancement of the U.S. exhibitor's export potential.

In order for a fair organizer to consider a participant a U.S. exhibitor, the participant must be (1) a U.S. citizen, U.S. corporation, or a foreign corporation that is more than 95% U.S.-owned and (2) the products it exhibits at the fair must be: (a) Manufactured or produced in the United States, or (b) if manufactured or produced outside of the United States, marketed under the name of a U.S. firm and have U.S. content representing at least fifty-one percent of the value of the finished good or service.

Application Requirements: Applicants submitting applications for Trade Fair Certification must submit: (1) A narrative statement addressing each question in the application, Form ITA 4100P (found at *www.export.gov/tradefairs*); (2) a signed statement that "The information submitted in this application is correct and the applicant will abide by the terms set forth in the Participation Agreement and Conditions of Participation;" (3) any other relevant information. All application materials must be submitted via email to *TFC@trade.gov* no later than 270 days (9 months) prior to the first day of the fair, and no earlier than the conclusion of the prior occurrence of the event. There is no fee required to apply.

Certified Trade Fair Organizer Responsibilities:

Applicants will be notified via email 4–6 weeks from the date of application submission as to their selection status.

A Certified Trade Fair Organizer is expected to:

(a) Pay the $2,000 non-refundable participation fee for Trade Fair Certification to Commerce within 10 business days of notice that the fair has been certified;

(b) Designate an individual on the organizer's staff to act as the point-of-contact for Commerce staff on all aspects of the show with Commerce personnel;

(c) Provide the following exhibition services:

- Display space comparable with industry standards for similar trade events;
- Freight forwarding and exhibit set-up services including, but not limited to, the unloading of participants' equipment at the exhibition site, delivery to the participants' booths, unpacking, placement in display area, storing packing crates, repacking and loading for onward shipment, customs clearance, and any other services required to assure the prompt and orderly receipt and dispatch of material in and out of the exhibition site;
- Installation of a display system, chairs, tables, standard company identification and standard opening identification signs;
- Utilities and hook-up services; and
- Assistance in hiring interpreters, clerical personnel or booth attendants as required by participants.

All fees to be charged to participants for standard and supplementary services must be stated in the organizer's application and be within reasonable range of such charges in the market as can be verified by Commerce's post in-country.

(d) Undertaking, as appropriate, a comprehensive promotional campaign, such as in-country pre-show press conferences and meetings to reach importers, distributors, agents, buyers and end-users;

(e) Provide, at no cost to the Post, space and a furnished booth for use as the Business Information Office (BIO). If a U.S. pavilion is utilized, the BIO should be co-located with the exhibitors in the U.S. pavilion.

(f) In keeping with Commerce's mandate, show evidence of efforts to target infrequent exporters (new-to-market firms) and small and medium sized firms in its recruitment efforts.

(g) If the fair is located at a site where there is no US&FCS office or where the Commerce staff responsible for the show's industry theme is not local, pay the per-diem and travel-related expenses that exceed the allocation for such expenses in the participation fee, subject to Commerce's guidelines.

(h) Provide a list of recruited U.S. exhibitors to the Commerce project officer 45 days prior to the commencement of the fair.

(i) Certify that the products and services the recruited U.S. exhibitors seek to market at the fair:

1. Are manufactured or produced in the United States, or

2. If manufactured or produced outside of the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service.

(j) Prominently display the US&FCS logo or International Trade Administration (ITA) emblem on event promotional materials, exhibition booth fascia, and throughout the U.S. pavilion, if one is organized, in accordance with applicable Commerce Department logo use policies.

The Trade Fair Certification Program is the principal program Commerce uses to support private sector recruitment and organization of overseas trade fairs. As a condition of using the US&FCS logo or ITA emblem for a Certified Trade Fair, it must be the dominant logo used to promote the fair to U.S. exhibitors;

- If other U.S. Government or non-government logos are used, they must appear smaller than the US&FCS logo or ITA emblem and may not be co-mingled with the US&FCS logo or ITA emblem.
- Documentation of the use of the US&FCS logo or ITA emblem should be sent to Commerce for recordkeeping. Advance review of the use is not required. Fair organizers are encouraged to ask Commerce for guidance on the proper use of its logos/emblems.
- Failure to abide by Commerce policies on the proper use of its logos/emblems may result in the fair being de-certified.

Commerce reserves the right to "decertify" a fair at any time after Certification is granted if the organizer has not or is not likely to fulfill its responsibilities as a Certified Trade Fair organizer. In such an event, the organizer shall remain solely responsible for its obligations to the recruited U.S. exhibitors. Commerce may withdraw all assistance and support, including the right of the organizer to use the US&FCS logo or ITA emblem.

Department of Commerce Services and Responsibilities:

Commerce support provided for Certified Trade Fairs will generally be the same for all certified fairs, but minor variances may exist, depending on the circumstances of the fair, and the specific needs of the organizer and of Commerce.

For a Certified Trade Fair, Commerce is expected to:

(a) Provide a certificate designating that the fair as being certified by the U.S. Department of Commerce;

(b) Authorize the use of the US&FCS logo and the ITA emblem on appropriate fair publicity materials, in accordance with applicable Commerce Department logo use policies;

(c) Provide authorization for the use of other Commerce-approved references that indicate the Department recognizes and supports the fair, in accordance with Commerce policies;

(d) Provide a designated project officer to assist the organizer and act as a Commerce point-of-contact;

(e) Provide the organizer, upon request, with relevant public Commerce reports and publications;

(f) Encourage potential U.S. exhibitors, through Commerce's normal course of export counseling or through contacts with business and trade associations, to consider participation in the Certified Trade Fair and refer inquiries to the show organizer; and

(j) Upon request and to the extent available, arrange counseling for U.S. exhibitors by U.S. Export Assistance Center Trade Specialists and Industry and Analysis Industry Analysts in advance of the fair.

Local US&FCS Office Services and Responsibilities:

In addition to the general Commerce support listed above, the designated US&FCS office for the Certified Trade Fair is expected to:

(a) Furnish the organizer with a list of key local associations, distributors, agents, government entities, and other relevant information;

(b) Promote the fair locally by including an announcement of the event in its commercial newsletter or the equivalent;

(c) Upon request and subject to the availability of resources, provide staff at a Business Information Office to counsel U.S. exhibitors, facilitate contacts between exhibitors and visitors, and promote US&FCS services. The BIO cannot be used for any other purpose, unless agreed to by the US&FCS office; and

(d) Upon request and subject to the availability of resources, provide additional services, such as: A U.S. exhibitor briefing; reception; promotional mailing; ribbon-cutting ceremony; press conference; etc. If the costs of these additional services exceed the allocation of the participation fee for the US&FCS Office, the organizer will incur an additional fee. Such costs will be determined by the Senior Commercial Officer at the designated US&FCS Office.

Legal Authority:

Authority for the Trade Fair Certification Program is provided by 15 U.S.C. 4721, which authorizes US&FCS to promote U.S. exports and support U.S. commercial interests abroad, and the Mutual Educational and Cultural Exchange Act (MECEA) of 1961 (22 U.S.C. 2455(f) and 2458(c)), as incorporated into ITA's annual appropriations act, Public Law 114–113, 129 Stat. 2287.

Section II. Potential Concepts for Program Changes

The Department of Commerce intends to make significant changes to the Trade Fair Certification Program in the future. Some of the potential concepts under consideration may include, but are not limited to, the bulleted list below. We welcome public comments on these concepts.

- The Department is considering changing the application timeframe from rolling applications to an annual application period, meaning applications will be collected during a 45–60 day application period held once a year.
- The Department is considering increasing the price of the Program.
- The Department is considering offering Trade Show Organizers an a la carte menu of services instead of one standard service. Prices will be associated with each service option.
- The Department is considering tiers of service with different levels of Departmental engagement priced at different levels.
- The Department is considering raising the minimum number of U.S. exhibitors from 10 to 25 or more.
- The Department is considering changing the minimum number of U.S. exhibitors from 10 exhibitors to a set percentage of the total number of exhibitors.
- The Department is considering issuing a formal Memorandum of Agreement, outlining the responsibilities of both parties and signed by both parties, for selected shows.

Electronic Submission of Comments: Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking according to these instructions. Commenters should make online submissions using *http://www.regulations.gov.* Comments should be submitted under ITA–2016–0005. To find this docket, enter the docket number in the "Enter Keyword or ID" Window at the *http://www.regulations.gov* home page and click "Search." The site will provide a search-results page listing all documents associated with the docket number. Find a reference to this document by selecting "Proposed Rule" under "Document Type" on the search-results page, and click on the link entitled "Submit a Comment." The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. ITA prefers submissions to be provided in an attached document. (For further information on using *http://www.regulations.gov,* please consult the resources provided on the Web site by clicking on the "Help" tab.) Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

All comments submitted in response to this document will be made available to the public so should not include any privileged or confidential business information. The file name should begin with the character "P" (signifying that the comments contain no privileged or confidential business information and can be posted publicly), followed by the name of the person or entity submitting the comments.

Frank Spector,

Senior Advisor for Trade Missions, Trade Promotion Programs.

[FR Doc. 2016–17414 Filed 7–28–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF JUSTICE

28 CFR Part 35

[CRT Docket No. 128]

RIN 1190–AA65

Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Supplemental advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On May 9, 2016, the Department of Justice (Department) published a Supplemental Advance Notice of Proposed Rulemaking (SANPRM) in the **Federal Register** addressing the potential application of technical accessibility requirements to the Web sites of title II entities. The comment period is scheduled to close on August 8, 2016. The Department is extending the comment period by 60 days until October 7, 2016, in order to provide additional time for the public to prepare comments.

DATES: The comment period for the SANPRM, published on May 9, 2016 (81 FR 28657), is extended. All comments must be received by October 7, 2016.

ADDRESSES: You may submit comments, identified by RIN 1190–AA65 (or Docket ID No. 128), by any one of the following methods:

- *Federal eRulemaking Web site: www.regulations.gov.* Follow the Web site's instructions for submitting comments.
- *Regular U.S. mail:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 2885, Fairfax, VA 22031–0885.
- *Overnight, courier, or hand delivery:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 1425 New York Avenue, NW., Suite 4039, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Rebecca Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY). This document is available in alternate formats for people with disabilities.

SUPPLEMENTARY INFORMATION: The Department of Justice published a Supplemental Advance Notice of Proposed Rulemaking (SANPRM) in the **Federal Register** on May 9, 2016, addressing the potential application of technical accessibility requirements to the Web sites of title II entities. 81 FR 28657 (May 9, 2016). The SANPRM asks 123 multipart questions, seeking public comment on a wide range of complex issues related to the potential technical accessibility requirements as well as any proposed title II Web rule's costs and benefits. Following the SANPRM's publication, the Department received three comments requesting that the public comment period be extended by 90 days. The requests indicated that more time is needed to provide meaningful, comprehensive responses to the SANPRM because of the complexity of issues discussed, the number of questions posed, and the amount of data and information requested.

The Department has decided to grant a 60-day extension of the comment period until October 7, 2016. Given the importance of both providing title II entities with clear guidance regarding their ADA obligations for Web access and providing persons with disabilities equal access to State and local government programs, services, and activities, the Department seeks to continue moving the rulemaking process forward. Additionally, a title II Web accessibility rule is likely to facilitate the creation of an infrastructure for Web accessibility that will be very important in the Department's preparation of the title III Notice of Proposed Rulemaking on Web site accessibility for public accommodations. Further delays in this title II rulemaking, therefore, will have the effect of hindering the title III Web rulemaking's timeline as well. The Department believes that this 60-day extension provides sufficient time to allow interested parties to provide comments on this SANPRM. Comments on the SANPRM may be provided by October 7, 2016, via the methods described above.

Dated: July 25, 2016.

Vanita Gupta,

Principal Deputy Assistant Attorney General, Civil Rights Division.

[FR Doc. 2016–18003 Filed 7–28–16; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 140, 143, and 146

46 CFR Parts 61 and 62

[Docket No. USCG–2014–0063]

RIN 1625–AC16

Requirements for MODUs and Other Vessels Conducting Outer Continental Shelf Activities With Dynamic Positioning Systems; Training Certification Programs

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability of dynamic positioning training certification programs.

SUMMARY: The Coast Guard is providing the following information on dynamic positioning training certification programs.

DATES: July 29, 2016.

FOR FURTHER INFORMATION CONTACT: For information about this document, call Ms. Mayte Medina, U.S. Coast Guard, 202–372–1492

SUPPLEMENTARY INFORMATION: On November 28, 2014, the Coast Guard published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) on Requirements for MODUs and Other

Vessels Conducting Outer Continental Shelf Activities With Dynamic Positioning Systems (Docket No. USCG–2014–0063, RIN 1625–AC16) (79 FR 70943). The NPRM proposes to establish minimum design, operation, training, and manning standards for mobile offshore drilling units and other vessels using dynamic positioning systems to engage in Outer Continental Shelf activities. The Coast Guard has not yet published a final rule on this subject.

Since the comment period closed, the Coast Guard has received inquiries regarding availability of dynamic positioning training certification programs. We are aware of three industry accepted training certification programs for dynamic positioning:

- The Offshore Service Vessel Dynamic Positioning Authority's (OSVDPA) MPP–1–001, the OSVDPA's Manual of Policies and Procedures (Version 1) (January 2016);
- The Nautical Institute's Dynamic Positioning Operator's Training and Certification Scheme Version 1.1 (January 2015); and,
- Det Norske Veritas/Germanischer Lloyd's Recommended Practice for Certification Scheme for Dynamic Positioning Operators (DNVGL–RP–0007).

The Coast Guard is providing this information to assist the public in locating dynamic positioning training certification programs, and does not endorse or recommend any such program. To the extent that programs not listed above may exist, their absence from the list is due entirely to the fact that the Coast Guard is unaware of them, and does not constitute or imply a determination that programs on the list are preferable to any that may exist and are not included on the list.

This document is issued under authority of 5 U.S.C. 552(a).

Dated: July 26, 2016.

J.G. Lantz,

Director of Commercial Regulations and Standards, United States Coast Guard.

[FR Doc. 2016–18036 Filed 7–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0288]

RIN 1625–AA00

Safety Zone, Banks Channel; Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters adjacent to Harbor Island and Wrightsville Beach, NC. This proposed safety zone would restrict vessel movement on portions of Masonboro Inlet, Banks Channel, and Motts Channel during the PPD Ironman NC event on October 22, 2016. This action is necessary for the safety of life on the surrounding navigable waters during this event. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before August 15, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0288 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Ryan Phillips, Coast Guard Sector North Carolina, Coast Guard; telephone (910)772–2212, email *Ryan.A.Phillips@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On October 22, 2016, PPD Ironman NC notified the Coast Guard that as part of the PPD Ironman NC event approximately 2500 swimmers will compete along a course starting at Masonboro Inlet from 7 a.m. to 11 a.m. on October 22, 2016. The course begins at approximate location latitude 34°11′13″ N. longitude 077°48′53″ W., continuing north in Banks Channel crossing at the approximate location latitude 34°12′14″ N. longitude 077°48′04″ W. into Motts channel heading west stopping at Sea Path Marina where swimmers will exit the water approximately at latitude 34°12′44″ N. longitude 077°48′25″ W. in Wrightsville Beach, NC.

The purpose of this rulemaking is to ensure the safety of swimmers and rescue crews from hazards associated with vessel traffic and other hazards. The Coast Guard proposes this rulemaking under authority in: 33 U.S.C. 1231; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 7 a.m. to 11 a.m. on October 22, 2016. The safety zone would cover all navigable waters starting at the approximate position latitude 34°11′13″ N., longitude 077°48′53″ W., heading north to approximate position latitude 34°12′14″ N., longitude 077°48′04″ W., traveling west and ending at approximate position latitude 34°12′44″ N., longitude 077°48′25″ W. The duration of the zone is intended to ensure the safety of swimmers during the scheduled 7 a.m. to 11 a.m. swimming event. Except for vessels authorized by the COTP North Carolina or her designated representative, no person or vessel except safety crew designated by PPD Ironman NC may enter or remain in the safety zone. All persons and vessels granted permission to enter the zone must comply with the instructions of the COTP North Carolina or her designed representative.

Notification of the temporary safety zone will be provided to the public via marine information broadcasts. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rulemaking elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves: a safety zone lasting 4 hours that would prohibit entry into the proposed safety zone. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add, under the undesignated center heading Fifth Coast Guard District, temporary § 165.T05–0437 to read as follows:

§ 165.T05–0437 Safety Zone, Wrightsville Beach, NC.

(a) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commander, Sector North Carolina. *Representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) *Location.* The following area is a safety zone: all waters at Masonboro Inlet starting at approximate location latitude 34°11′13″ N. longitude 077°48′53″ W., heading north in Banks Channel at approximate location latitude 34°12′14″ N. longitude 077°48′04″ W., heading west into Motts channel and stopping at Sea Path Marina approximately at latitude 34°12′44″ N. longitude 077°48′25″ W. in Wrightsville Beach, NC.

(c) *Regulations.* (1) The general regulations contained in § 165.23 apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requesting entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative. The Captain of the Port or his designated representative can be contacted at telephone number (910) 343–3882 or by radio on VHF Marine Band Radio, channels 13 and 16.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 7 a.m. to 11 a.m. on October 22, 2016, unless cancelled earlier by the Captain of the Port.

Dated: July 14, 2016.

P.J. Hill,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2016–17927 Filed 7–28–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0129; FRL–9949–64–Region 4]

Air Plan Approval; Alabama: Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Alabama State Implementation Plan submitted by the Alabama Department of Environmental Management on October 26, 2015. The revision modifies the definition of "volatile organic compounds" (VOC). Specifically, the revision adds three compounds to the list of those excluded from the VOC definition on the basis that these compounds make a negligible contribution to tropospheric ozone formation. This action is being taken pursuant to the Clean Air Act.

DATES: Written comments must be received on or before August 29, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0129 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Wong can be reached via telephone at (404) 562–8726 or via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, EPA is approving the State's implementation plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: July 15, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–17813 Filed 7–28–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0407; FRL–9949–67–Region 7]

Partial Approval and Partial Disapproval of Implementation Plans; State of Iowa; Infrastructure SIP Requirements for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove elements of a State Implementation Plan (SIP) submission from the State of Iowa for the 2008 National Ambient Air Quality Standards (NAAQS) for ozone. Infrastructure SIPs address the applicable requirements of Clean Air Act (CAA) section 110, which requires that each state adopt and submit a SIP

for the implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by the EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before August 29, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0407, to *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551–7039; *email address: hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. A detailed technical support document (TSD) is included in this rulemaking docket to address the following: A description of Clean Air Act section 110(a)(1) and (2) infrastructure SIPs; the applicable elements under sections 110(a)(1) and (2); EPA's approach to the review of infrastructure SIP submissions, and EPA's evaluation of how Iowa addressed the relevant elements of sections 110(a)(1) and (2). This section provides additional information by addressing the following questions:

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is EPA taking?

I. What is being addressed in this document?

The EPA is proposing to partially approve and partially disapprove the infrastructure SIP submission from the State of Iowa received on January 17, 2013. Specifically, EPA proposes to approve the following elements of section 110(a)(2): (A), (B), (C), (D)(i)(II)—prong 3 only, (E) through (H), and (J) through (M). EPA proposes to disapprove element (D)(i)(II)—prong 4. EPA will not be acting on sections (D)(i)(I)—prongs 1 and 2, and (I).

A Technical Support Document (TSD) is included as part of the docket to discuss the details of this proposal, including analysis of how the SIP meets the applicable 110 requirements for infrastructure SIPs.

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the TSD which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What action is EPA taking?

The EPA is proposing to partially approve and partially disapprove the January 17, 2013 infrastructure SIP submission from the State of Iowa, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2008 ozone NAAQS. As stated above, EPA proposes to approve the following elements of section 110(a)(2): (A), (B), (C), (D)(i)(II)—prong 3 only, (E) through (H), and (J) through (M). EPA proposes to disapprove element (D)(i)(II)—prong 4. Details of the submission are addressed in a TSD as part of the docket to discuss the proposal.

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

IV. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

V. Statutory Authority

The statutory authority for this action is provided by section 110 of the CAA, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Prevention of significant deterioration, Reporting and recordkeeping requirements.

Dated: July 18, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

■ 2. In § 52.820, the table in paragraph (e) is amended by adding the entry "(43) Sections 110(a)(1) and (2) Infrastructure Requirements 2008 Ozone NAAQS" in numerical order to read as follows:

§ 52.820 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IOWA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	* * *
(43) Sections 110(a)(1) and (2) Infrastructure Requirements 2008 Ozone NAAQS.	Statewide	1/17/13	7/29/16 [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II)—prong 3 only, (E), (F), (G), (H), (J), (K), (L), and (M). 110(a)(2)(I) is not applicable. [EPA–R07–OAR–2016–0407; FRL–9949–67–Region 7].

[FR Doc. 2016–17787 Filed 7–28–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–300–L13100000.PP0000]

RIN 1004–AE37

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed order.

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend its existing Onshore Oil and Gas Order Number 1 (Onshore Order 1) to require the electronic filing (or e-filing) of all Applications for Permit to Drill (APD) and Notices of Staking (NOS). Currently, Onshore Order 1 states that an "operator must file an APD or any other required documents in the BLM Field Office having jurisdiction over the lands described in the application," but allows for e-filing of such documents in the alternative. This proposal would change that structure to make e-filing the required method of submission, subject to limited exceptions. The BLM is making this change to improve the efficiency and transparency of the APD and NOS processes.

DATES: Send your comments on this proposal to the BLM on or before August 29, 2016. The BLM need not consider, nor include in the administrative record for the final order, comments received after this date. If you wish to comment on the information collection requirements in this proposed order, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed order between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by August 29, 2016.

ADDRESSES: You may submit comments on the proposed order to the BLM by any of the following methods:

- *Mail:* Director (630) Bureau of Land Management, U.S. Department of the Interior, 1849 C St. NW., Room 2134 LM, Washington, DC 20240, Attention: 1004–AE37.
- *Personal or messenger delivery:* U.S. Department of the Interior, Bureau of Land Management, 20 M Street SE., Room 2134 LM, Attention: Regulatory Affairs, Washington, DC 20003.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions at this Web site.

You may submit comments on the proposed collection of information by fax or electronic mail to OMB by any of the following methods:

- *Fax:* Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Officer for the Department of the Interior, 202–395–5806.
- *Electronic mail: oira_submission@omb.eop.gov.*

On all submissions to OMB, please indicate "Attention: Approval of Operations, OMB Control Number 1004–XXXX," regardless of the method used. If you submit comments on the proposed collection of information, please provide the BLM with a courtesy copy of your comments at one of the addresses shown above.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment for the BLM to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Division Chief, Fluid Minerals Division, 202–912–7143 for information regarding the substance of the order or information about the BLM's Fluid Minerals Program. For information on procedural matters or the rulemaking process, please contact Mark Purdy, Regulatory Affairs Division, 202–912–7635. Persons who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of the Proposed Order
IV. Procedural Matters

I. Public Comment Procedures

This proposed order is administrative in nature and would not change the content of what must be submitted in an APD or NOS, only the method of submission; therefore, this proposed order has a 30-day public comment period. Please make your comments as specific as possible by confining them to issues directly related to the content of this proposed rule, and explain the basis for your comments. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and
2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the final order comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**). Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES** during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

II. Background

The BLM regulations governing onshore oil and gas operations are found at 43 Code of Federal Regulations (CFR) part 3160, Onshore Oil and Gas Operations. Section 3164.1 provides for the issuance of Onshore Oil and Gas Orders to implement and supplement the regulations found in part 3160. Onshore Order 1 has been in effect since October 21, 1983, and was most recently amended in 2007 (see 72 FR 10308 (March 7, 2007)).

Through this proposal, the BLM is proposing to modify Onshore Order 1 to require operators to submit NOSs and APDs through the BLM's electronic permitting (e-permitting) system, as opposed to the current system, which allows either hardcopy or electronic submission. Under the proposed order, the BLM would consider granting waivers to the e-filing requirement for individuals who request a waiver because they would experience hardship if required to e-file (*e.g.*, if an operator is prevented from e-filing or is in a situation that would make e-filing so difficult to perform that it would significantly delay an operator's APD submission).

An APD is a request to drill an oil or gas well on Federal or Indian lands. An operator must have an approved APD prior to drilling.[1] Prior to submitting an APD, an applicant may file an NOS requesting the BLM to conduct an onsite review of an operator's proposed oil and gas drilling project. The purpose of an NOS is to provide the operator with an opportunity to gather information and better address site-specific resource concerns associated with a project while preparing their APD package. Operators are not required to submit an NOS prior to filing an APD.

The BLM has recently experienced a decrease in the number of APDs received due to current market conditions. Historically, the BLM received an average of about 5,000 APDs per year for wells on Federal and Indian lands, of which Indian lands account for about 16%. In FY 2015, the BLM received approximately 4,500 APDs. In FY 2016 to date, through the end of June 2016, BLM has received 1,010 APDs. In coming years, due to the recent drop in oil prices and persistently low natural gas prices, the BLM conservatively estimates that an average of 3,000 APDs will be submitted per year. The BLM anticipates these market conditions to continue for the near term.

Over the last few years, roughly half of the APDs submitted to the BLM were submitted using the e-permitting system (Well Information System, or WIS). The other half of the APDs were submitted in hard copy. The available data show that use of the BLM's e-permitting system for APDs and NOSs is common and broad-based among operators, and therefore is not a novel concept. More importantly, the data show that the use of e-filing has increased over time, with the rate nearly doubling from 26 percent in FY 2010 to 51 percent in FY 2014. As of 2014, approximately 411 operators had used the BLM's legacy WIS to e-file NOSs, APDs, well completion reports, sundry notices, and other application materials. Those operators represent an estimated 85 percent of the operators that conduct drilling and completion operations on Federal and Indian leases nationwide.

The BLM's legacy WIS system is a web-based application that operators can use to submit permit applications and other types of information electronically over the Internet. The WIS system was an extension of the BLM's current Automated Fluid Minerals Support System (AFMSS). AFMSS is a database used to track various types of oil and gas information on Federal and Indian lands, including the processing of APDs.

Automated Fluid Minerals Support System II

The BLM has developed and deployed an update to its Automated Fluid Minerals Support System called AFMSS II. The APD module within AFMSS II replaces the legacy WIS system. In December 2015, the BLM began phasing in AFMSS II's APD module and conducting training for staff and operators. As of the date of this proposal, the APD module is fully operational, and the BLM anticipates that WIS will be phased out in the third quarter of calendar year 2016. Therefore, the BLM anticipates that the number of operators who use the APD module will continue to increase.

Efficiency and Transparency

The goal of the AFMSS II system and the proposed amendments to Onshore Order 1 is to improve operational efficiency and transparency in the processing of APDs and NOSs by requiring operators to use BLM's updated e-permitting system as the default approach to APD filing. Although data show that voluntary use of the e-permitting system has increased over time, the proposal is necessary to move towards 100 percent electronic APD submission.

This shift presents potential advantages to operators, including operators owned by individual Indian tribes, because the new AFMSS II system is expected to streamline the application process. The system will expedite processing and enhance transparency resulting in savings to both operators and the U.S. Government by:

- Reducing the number of applications with deficiencies by providing users the ability to identify and correct errors through error notifications during the submission process;
- Utilizing the auto-fill function to automatically populate data fields based on users' previously submitted information;

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[1] In some cases, operators are companies owned by individual Indian tribes. Such companies are usually established to produce the minerals owned by the tribe and, thus, are operated for the benefit of the tribe.

- Allowing operators to track the progress of their application throughout the BLM review process;
- Facilitating the use of pre-approved plans, such as Master Development Plans and Master Leasing Plans; and
- Allowing users to directly interface with BLM applications.

The AFMSS II system was developed in response to the Government Accountability Office's (GAO) and the Department of the Interior Office of the Inspector General's (OIG) recommendations in GAO report 13–572 (GAO–13–572) and OIG report CR–EV–MOA–0003–2013 (Report No. CR–EV–MOA–0003–2013). Both reports recommended that the BLM ensure that all key dates associated with the processing of APDs are completely and accurately entered and retained in AFMSS, and in any new system that replaces AFMSS, to help assess compliance with deadlines and identify ways to improve the efficiency of the APD review process. Additionally, the OIG report recommends that the BLM: (1) Develop, implement, enforce, and report performance timelines for APD processing; (2) Develop outcome-based performance measures for the APD process that help enable management to improve productivity; and (3) Ensure that the modifications to AFMSS enable accurate and consistent data entry, effective workflow management, efficient APD processing, and APD tracking at the BLM Field Office level. The APD module developed for AFMSS II addresses these recommendations from the OIG and the GAO.

III. Discussion of the Proposed Rule

This proposal would revise existing Onshore Order 1, which primarily supplements 43 CFR 3162.3 and 3162.5. Section 3162.3 covers conduct of operations, applications to drill on a lease, subsequent well operations, other miscellaneous lease operations, and abandonment. Section 3162.5 covers environmental and safety obligations.

Section-by-Section Discussion of Proposed Changes

This section of the preamble explains the handful of changes that the BLM is proposing to make to the existing provisions of Order 1. However, in order to provide context for the proposed changes, we have included the subsections where BLM's proposed changes are being made in their entirety—*Where To File an APD, Where To File an NOS, and APD Posting.* No other changes beyond the modifications proposed here are being made to those sections.

Where To File an APD

The proposed revision to section III.A. would require operators to file APDs using the BLM's electronic commerce application, AFMSS II, for oil and gas permitting and reporting. The BLM hopes to move towards an electronic submission rate of 100 percent. Receiving a portion of the APDs electronically and a portion in hard copy introduces a number of inefficiencies and necessitates multiple records management systems. In addition, the BLM anticipates that submission through the e-permitting system will improve processing times, public participation, and transparency.

Where To File an NOS

Similarly, the proposed revision to section III.C. would require operators to file NOSs using the BLM's e-permitting system for oil and gas permitting and reporting. As for APDs, the BLM hopes to move towards an electronic submission rate for NOSs of 100 percent. As with APDs, receiving a portion of the NOSs electronically and a portion in hard copy introduces a number of inefficiencies and necessitates multiple records management systems. In addition, we expect that submission through the e-permitting system will improve processing times, transparency, and public participation.

APD Posting

Section III.E.1. currently requires the BLM to post information about the APD or NOS in an area of the local BLM Field Office that is readily accessible to the public. Section III.E.1. also calls for this information to be posted on the Internet when possible, though this is not required. Currently, some offices are posting information about an APD or an NOS on their local Field Office Web site. Under the proposed revision to section III.E.1., the BLM would still post hardcopy information about the APD or NOS in the applicable BLM Field Office, but it would also post the information on the Internet in all cases. The BLM is making this change to increase consistency, transparency, and efficiency for both operators who file APD submissions and the public. In addition to revising section III.E.1. to require the BLM to post information about APDs and NOSs online in all cases, the BLM has also clarified that section to ensure consistency with 43 CFR 3162.3–1(g), which requires the BLM to post certain information about an APD or NOS at least 30 days before approval for publication inspection. In addition to consistency with the regulations, this change is also consistent with the BLM's statutory obligations to protect confidential business obligation.

Although this proposed revision would update how the BLM posts APD and NOS information, it would not change the type of information that would be posted, which is specified in 43 CFR 3162.3–1(g). This section already identifies what information should be posted: The company/operator name; the well name/number; and the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing the affected lands and the location of all tracts to be leased, and of all leases already issued in the general area. Where the inclusion of maps in such posting is not practicable, the BLM provides maps of the affected lands available to the public for review. In addition, as under the current order, this posting requirement would apply only to APDs or NOSs proposing to drill into and produce Federal minerals. The posting requirement would not apply to APDs or NOSs for Indian minerals, which are not made publicly available.

Waiver From Electronic Submissions

Proposed section III.I. is a new section that would allow operators to request a waiver from the requirements in proposed sections III.A. and III.C. This section would be different from section X., which addresses the requirements for requesting a variance from this Order. Unlike a variance from the substantive requirements of Order 1, a waiver under this proposed order is limited to the means of submission of an APD (electronic or hardcopy). A waiver under section III. would also be different from a waiver under section XI., which addresses lease stipulations. Unlike a waiver from the requirement(s) of a lease stipulation, a waiver under this proposed order is not a permanent exemption from the BLM's requirement to file applications electronically. The BLM's approval of a waiver request under this proposed order would apply specifically to those applications identified in the waiver request. In connection with any request for a waiver under section III.I., the operator would need to explain the reason(s) that prevents it from using the e-permitting system. The waiver would be subject to BLM approval.

Under the proposed order, the BLM would not consider an APD or NOS that the operator did not submit through the e-permitting system, unless the BLM approves a waiver from the e-permitting filing requirement under proposed section III.I. The BLM understands that under certain circumstances the operator may experience a hardship that prevents use of the e-permitting system. When considering a waiver request, the BLM will evaluate each circumstance that serves as a basis for claiming a hardship. While the BLM cannot conceive of every scenario that may qualify as a hardship, for purposes of illustrating the waiver process, hardships are those conditions or circumstances that may prevent an operator from e-filing or would make e-filing so difficult to perform that it would significantly delay an operator's APD submission. In those exceptional cases, the BLM will review the operator's request and determine whether a waiver allowing the operator to submit hard copies is warranted.

IV. Procedural Matters

Considerations

While the order would require that all operators e-file NOSs and APDs, as a practical matter, it would likely have a greater impact on operators that do not currently use the BLM's e-permitting system. Operators that already use the e-permitting system would likely continue to use the system, regardless of the proposed order, and therefore will not be impacted by the proposed changes.

The proposed requirements are estimated to pose relatively small compliance costs (see discussion in the *Affected Entities* section) associated with administrative compliance and access to the BLM's e-filing system, if an impacted operator has not used the BLM's e-permitting system due to a limiting factor, *e.g.*, if the operator has not purchased access to the Internet or if access is not available due to the remoteness of its location. These operators are likely to hire a permit agent to e-file the APD, acquire Internet access depending on the coverage and the availability of service providers, or find another work-around solution. While the proposed order places requirements on the mechanism by which the operators submit APDs or NOSs, it does not change the content required for either submission.

The requirements may also result in cost savings to the impacted operators by reducing the amount of time spent correcting deficiencies in APDs. The filing of APDs through the modernized AFMSS II is expected to reduce the number of APD submissions that have deficiencies and, for APDs where deficiencies exist, reduce the time it takes for the operator to correct those deficiencies. Reduced APD processing times would benefit impacted operators in that they would be able to commence drilling and develop the mineral resources sooner. On Indian lands, this would be very beneficial to the tribes and Indian allottees since they are the direct recipients of the royalties generated from the minerals that they own.

There will also be improved transparency during the application and review process for APDs that are e-filed. With the transition to AFMSS II, the operator is able to check the status of the APD, and the public is able to find and access information online, in one location. In the interim, the BLM continues to maintain hard copy records for APDs submitted in hard copy consistent with records management and retention requirements.

Affected Entities

All entities involved in the exploration and production of crude oil and natural gas resources on Federal and Indian leases and that submit APDs or NOSs after the effective date of the final rule would be subject to its requirements.

We estimate that the proposed amendments would impact about 484 operators,[2] and that these operators might experience a small increase in administrative costs associated with submitting an APD and NOS to the BLM through the new APD module, due to the newness of the system. Operators that comply by submitting a waiver request that is accepted by the BLM might also experience a small increase in costs associated with preparing the waiver request. We estimate the annual average costs per operator to be approximately $3,920 per operator during the rule's initial implementation period; however, we expect those costs to decrease quickly over time as operators become familiar with the new AFMSS II submission system. In total, we estimate that the proposed amendments might pose annual administrative costs of $2.2 million (about $1.9 million per year to the industry and $315,000 per year to the BLM) during the initial phases. We believe this is a conservative estimate of costs given the relatively high proportion of APDs already submitted using BLM's existing e-filing systems.

In addition, we estimate that the proposed amendments would pose additional costs for those operators that currently do not use the BLM's e-permitting system. Specifically, those 73 entities[3] might face additional compliance costs of $1,200 per operator per year for Internet access, using the conservative assumption that they do not already have such access. In total, these compliance costs could be about $90,000 per year for all 73 affected operators. The increased e-filing rates that the BLM has observed during the rollout of the AFMSS II APD module suggest, however, that fewer than 73 operators would face these compliance costs.

We estimate that the proposed amendments would also benefit operators, since operators are expected to receive cost savings from more expedited APD processing. We estimate that receiving an APD via the e-permitting system rather than in hard-copy would reduce processing time by 27 percent or 60 days. Further, we estimate the cost savings to the operator of that increased efficiency to be $6,195 per APD. Given that the order would impact about 1,500 APDs per year, we estimate that the total cost savings could be about $9.3 million per year.

Together, the total benefits are expected to exceed the total costs, and the rule is expected to result in total cost savings of about $7 million per year on aggregate. We expect these aggregate benefits to translate to individual operators. For purposes of illustration, even if we assume an individual operator incurs costs as result of the proposed amendments because they do not currently use BLM's existing e-filing system and have to learn the new system, such an operator would still be expected to receive a net cost savings on a per-APD basis, given that the cost savings will exceed the combined administrative and other compliance costs. On a per APD basis, we expect increased costs of $1,716 per year—$516 in administrative burden/compliance costs, plus $1,200 in other compliance costs. Those costs are expected to be offset, however, by cost savings of $6,195 per APD. Therefore, on net, an operator submitting one APD per year would be expected to realize a net reduction in costs of $4,479 ($6,195 minus $1,716). That expected net benefit would increase as an operator's familiarity with the new e-filing system increases, as administrative costs would be reduced by such familiarity.

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[2] We examined AFMSS data over a 5-year period (from 2008 to 2012) and found that there were 484 operators that completed wells on Federal and Indian leases. We believe that this pool of operators is a good basis for an estimate about the entities that are likely to file APDs in the future, and therefore be subject to the requirements.

[3] According to BLM records, as of 2014, there were approximately 411 WIS users, representing 85 percent of the operators that would be subject to the proposed requirements. By extension, we can estimate that there are 73 entities that did not use WIS, representing 15 percent of the operators that would be subject to the requirements. These 73 entities were not users of the e-permitting system and will be most impacted by the rule.

As noted elsewhere in the preamble, some operators are owned by individual Indian tribes. Those operators typically develop the minerals owned by and for the benefit of the tribe. We expect the impacts and benefits of this proposal to apply to these operators to the same extent and in the same manner as to other entities operating on Federal or Indian lands. On net, we anticipate that the benefits of permitting-time efficiencies associated with 100% e-filing, will significantly outweigh any costs, especially as operators become more familiar with the AFMSS II system.

Executive Order 12866, Regulatory Planning and Review

The proposed order does not meet the criteria for economic significance under Executive Order 12866. The proposed order would not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The proposed order would not create inconsistencies or otherwise interfere with an action taken or planned by another agency. In addition, the proposed order would not materially affect the budgetary impact of entitlements, grants, loan programs, or the rights and obligations of their recipients.

Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 601–612). Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act and those size standards can be found in 13 CFR 121.201. The BLM reviewed the SBA classifications and found that the SBA specifies different size standards for potentially affected industries. The SBA defines a small business in the crude petroleum and natural gas extraction industry (North American Industry Classification System or NAICS code 211111) as one with 1,250 or fewer employees. However, for the natural gas liquid extraction industry (NAICS code 211112), it defines a small business as one with 750 or fewer employees.

The BLM reviewed the SBA size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the 2012 Economic Census. The data show the number of firms with fewer than 100 employees and those with 100 employees or more (well below the SBA size standards for the respective industries). According to the available data, over 95% and 91% of firms in the crude petroleum and natural gas extraction industry and the natural gas liquid extraction industry, respectively, have fewer than 100 employees. Therefore, we would expect that an even higher percentage of firms would be considered small according to the SBA size standards. Thus, based on the available information, the BLM believes that the vast majority of potentially affected entities would meet the SBA small business definition.

We examined the potential impacts of the proposed order and determined that up to 484 small entities would be subject to the proposed order's requirements and could face administrative burdens of about $3,920 per entity per year. In addition, up to 73 small entities could face other compliance costs of $1,200 per entity per year. However, we estimate that the administrative and other compliance costs would be offset as a result of improved APD processing times. We estimate that cost savings from faster APD processing could be $6,195 per APD. Moreover, we expect that the administrative burdens of the rule will lessen over time as operators become more familiar with the BLM's new e-permitting system.

Based on this review, we have determined that, although the proposal would impact a substantial number of small entities, it would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

This proposed order is also not a major rule under 5 U.S.C. 804(2) of the RFA, as amended by the SBREFA. This proposed order will not have an annual effect on the economy of $100 million or more. In fact, the BLM estimates that the benefits would exceed the costs, and that the rulemaking could result in net savings of $7 million per year. Similarly, this proposed order will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, tribal, or local government agencies, or geographic regions, nor does this proposed order have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed order is administrative in nature and only affects the method for submitting APDs and NOSs. The BLM prepared a preliminary economic threshold analysis as part of the record, which is available for review.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (UMRA), agencies must prepare a written statement about benefits and costs before issuing a proposed or final rule that may result in aggregate expenditure by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year.

The proposed order does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector, in any one year. Thus, the proposed order is also not subject to the requirements of sections 202 or 205 of UMRA. This proposed order is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments, nor does it impose obligations on them.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

In accordance with Executive Order 12630, the BLM has determined that the proposed order would not have significant takings implications. The proposed order would not be a governmental action capable of interfering with constitutionally protected property rights. Therefore, the proposed order will not cause a taking of private property or require a takings implication assessment under the Executive order.

Executive Order 13132, Federalism

This proposed order would not have federalism implications. The proposed order would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, a Federalism Assessment is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The BLM evaluated possible effects of the proposed order on federally recognized Indian tribes. Since the BLM approves proposed operations on all Indian onshore oil and gas leases (other than those of the Osage Tribe), the proposed order has the potential to affect Indian tribes, particularly those tribes with tribally-owned and -operated oil and gas drilling or exploration companies, which currently submit APDs and/or NOSs. In conformance with the Secretary's policy on tribal consultation, the BLM has extended an invitation to consult on the proposed rule to affected tribes, including tribes that either: (i) Own an oil and gas company; or (ii) own minerals for which the BLM has recently received an APD. Over the years, oil and gas development on Indian and allotted lands has been focused in the States of Colorado, Montana, New Mexico, North Dakota, Oklahoma, Texas, and Utah. Based on BLM records, the BLM anticipates that there are nearly 40 tribes for which the BLM has received or will foreseeably receive APDs or NOSs in connection with the development of tribal or allotted mineral resources.

Executive Order 12988, Civil Justice Reform

This rule complies with the requirements of Executive Order 12988. Specifically, this proposed order does not unduly burden the Federal court system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The BLM has reviewed the proposed order to eliminate drafting errors and ambiguity and the proposed order has been written to minimize litigation and provide clear legal standards.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a valid OMB control number. Relevant authorities (44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and (k)) provide that collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public. This proposed order contains information collection requirements that are subject to review by OMB under the PRA. OMB has approved the existing collection of information associated with onshore oil and gas operations under control number 1004–0137 (expiration date: January 31, 2018). In accordance with the PRA, the BLM has asked OMB for a new control number for the information-collection provisions in this proposed order and is inviting public comment on that request. When this proposed order is finalized and becomes effective, the BLM intends to ask OMB to combine the requirements and burdens of this proposed order with existing control number 1004–0137. For reference, the current burdens for control number 1004–0137 (920,464 hours and $32.5 million in non-hour costs) can be viewed at *http://www.reginfo.gov/public/*. Those burdens for the existing control number are unaffected by this proposed rule.

A copy of the information collection request may be obtained from the BLM by electronic mail request to Steven Wells at *s1wells@blm.gov* or by telephone request to 202–912–7143.

Completion of the new collection of information request would be required to obtain or retain a benefit for the operators of Federal and Indian onshore oil and gas leases, or units or communitization agreements that include Federal and Indian leases (except on the Osage Reservation or the Crow Reservation, or in certain other areas). The frequency of the collection would be "on occasion." The BLM has requested a 3-year term of approval for the new control number.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

If you would like to comment on the information collection requirements of this proposed rule, please send your comments directly to OMB, with a copy to the BLM, as directed in the **ADDRESSES** section of this preamble. Please identify your comments with "Approval of Operations, OMB Control Number 1004–XXXX." OMB is required to make a decision concerning the collection of information contained in this proposed order between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by August 29, 2016.

Summary of Proposed Information Collection Activities

Title: Approval of Operations (43 CFR part 3160).

Forms:

- Application for Permit to Drill or Re-Enter (Form 3160–3).
- Sample Format for Notice of Staking (Attachment 1 to 2007 Onshore Order 1, 72 FR at 10338).

OMB Control Number: This is a request for a new control number.

Description of Respondents: Private sector oil and gas operators.

Abstract: The BLM proposes to require e-filing of APDs and NOSs, and proposes a provision that would authorize applicants to seek a waiver from that requirement.

Frequency of Collection: On occasion.

Obligation to Respond: APDs and waiver requests are required to obtain or retain benefits. NOSs are voluntary.

Estimated Annual Responses: 3,450.

Estimated Reporting and Recordkeeping "Hour" Burden: 29,400.

Discussion of the Proposed Collection Activities

APDs: As revised here, section III.A. of Onshore Order 1 would require an operator to file an APD and associated documents using the BLM's electronic commerce application for oil and gas permitting and reporting. In addition to amending Onshore Order 1, this would have the effect of revising OMB control number 1004–0137. As discussed above, the BLM plans to seek OMB approval to incorporate the burdens of this proposed order into control number 1004–0137 after this proposed order is finalized and effective.

NOSs: As revised here, section III.C. of Onshore Order 1 would continue to provide that an NOS may be submitted voluntarily. Section III.C. would also require an operator who chooses to file an NOS to use the BLM's electronic commerce application for oil and gas permitting and reporting. Except for the new e-filing requirement, this is an existing collection in use without a control number. The purpose of submitting an NOS is to provide an operator an opportunity to gather information and better address site-specific resource concerns associated with a project while preparing an APD package.

Waiver Requests: Proposed section III.I. is a new section that would allow operators to request a waiver from the requirements in proposed sections III.A. and III.C. The request would have to be supported by an explanation of why the operator is not able to use the e-permitting system. In those exceptional cases, the BLM would review the operator's request and determine whether a waiver allowing the operator to submit hard copies is warranted.

Although the proposed order would direct the method by which operators must submit an APD or an NOS, it does not direct operators to obtain, maintain, retain, or report any more information than what is already required by the existing Onshore Order 1. The BLM recognizes operators may encounter a learning curve as they familiarize themselves with the database system, like any new software system to which users must adapt. However, that learning curve is expected to be temporary.

Furthermore, the BLM has sponsored multiple outreach strategies and training forums for its AFMSS clients, which should further mitigate the extent of industry's learning curve. These outreach efforts include:

- Easily accessible internet-based resources, including user-guides, audiovisual modules, user toolkits, and FAQs, that are available to operators or their agents, and
- Live trainings provided to users to allow for a more robust discussion with the BLM on how to use the system. The following table outlines the locations where the BLM has sponsored these trainings:

Training location	Dates	Operator/agent participation
BLM Offices	Jan–May 2016	Over 230 BLM Employees Trained.
Online Operator Training at the BLM's National Training Center, Phoenix, Arizona.	Dec 2015	Over 110 Operators Trained/47 Companies.
Online Operator Training and Individual Sessions at the BLM's National Operations Center, Denver, Colorado.	Mar–May 2016	Over 150 Operators trained.

Nonetheless, the BLM provides an estimate of the incremental burdens of e-filing and waiver submittal, which are itemized in the following table. These burdens would apply to both tribally and non-tribally-owned operators. In the case of APDs, these burdens are in addition to those estimated under OMB control number 1004–0137.

A. Type of response	B. Number of responses	C. Hours per response	D. Total hours
Application to Drill or Re-Enter 43 CFR 3162.3–1 and Section III.A. of Onshore Order 1 Form 3160–3	[4] 3,000	8	24,000
Notice of Staking Section III.C. of Onshore Order 1	[5] 300	16	4,800
Waiver Request Section III.I. of Onshore Order 1	[6] 150	4	600
Totals	3,450	28	29,400

National Environmental Policy Act

This proposed order does not constitute a major Federal action significantly affecting the quality of the human environment. The BLM has analyzed this proposed order and determined it meets the criteria set forth in 43 CFR 46.210(i) for a Departmental Categorical Exclusion in that this proposed order is ". . . of an administrative, financial, legal, technical or procedural nature . . . ." Therefore, it is categorically excluded from environmental review under the National Environmental Policy Act, pursuant to 43 CFR 46.205 and 46.210(c) and (i). The BLM also has analyzed this proposed order to determine if it involves any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement, as set forth in 43 CFR 46.215, and concluded that this proposed order does not involve any extraordinary circumstances.

Data Quality Act

In developing this proposed order, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C 515, 114 Stat. 2763, 2763A–153 to 154).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions. This Statement is to include a detailed statement of "any adverse effects of energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies)" for the action and reasonable alternatives and their effects.

Section 4(b) of Executive Order 13211 defines a "significant energy action" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action.'' The proposed order would not be a significant regulatory action under Executive Order 12866 as it would not have a significant adverse effect on the supply, distribution, or use of energy. The proposed order has also not been designated by the Administrator of OIRA as a significant energy action.

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[4] The estimated number of APDs submitted in a given year, based on historic data.

[5] Estimated as 10 percent of the roughly 3,000 APDs filed annually.

[6] Estimated as 10 percent of the 1,500 APDs likely to be impacted by the proposed order. BLM data show that half of APDs were already e-filed through the legacy WIS.

Executive Order 13352, Facilitation of Cooperative Conservation

The BLM determined that this proposed order involves changes to BLM processes. In accordance with Executive Order 13352, this proposed order would not impede facilitating cooperative conservation. The proposed order takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety.

Authors

The principal author of this proposed rule is Catherine Cook of the BLM, Division of Fluid Minerals, assisted by Mark Purdy, BLM, Division of Regulatory Affairs, and the Department of the Interior's Office of the Solicitor.

List of Subjects in 43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indian-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

Janice M. Schneider,

Assistant Secretary, Land and Minerals Management.

For reasons set out in the preamble, the Bureau of Land Management proposes to amend the appendix following the regulatory text of the final rule published in the **Federal Register** at 72 FR 10308 at 10328 (March 7, 2007), corrected on March 9, 2007 (72 FR 10608), effective March 7, 2007, as follows:

Note: This appendix does not appear in the BLM regulations in 43 CFR part 3160.

Appendix—Text of Oil and Gas Onshore Order

Amend the Onshore Oil and Gas Order Number 1 by revising sections III.A, III.C, and III.E, and adding section III.I to read as follows:

Onshore Oil and Gas Order Number 1

* * * * *

III. Application for Permit To Drill

* * * * *

A. Where To File

The operator must file an APD and associated documents using the BLM's electronic commerce application for oil and gas permitting and reporting. The operator may contact the local BLM Field Office for information on how to gain access to the electronic commerce application.

* * * * *

C. Notice of Staking Option

Before filing an APD or Master Development Plan, the operator may file a Notice of Staking with the BLM. The purpose of the Notice of Staking is to provide the operator with an opportunity to gather information to better address site-specific resource concerns while preparing the APD package. This may expedite approval of the APD. An operator must file a Notice of Staking using the BLM's electronic commerce application for oil and gas permitting and reporting. Attachment I, Sample Format for Notice of Staking, provides the information required for the Notice of Staking option.

For Federal lands managed by other Surface Managing Agencies, the BLM will provide a copy of the Notice of Staking to the appropriate Surface Managing Agency office. In Alaska, when a subsistence stipulation is part of the lease, the operator must also send a copy of the Notice of Staking to the appropriate Borough and/or Native Regional or Village Corporation.

Within 10 days of receiving the Notice of Staking, the BLM or the FS will review it for required information and schedule a date for the onsite inspection. The onsite inspection will be conducted as soon as weather and other conditions permit. The operator must stake the proposed drill pad and ancillary facilities, and flag new or reconstructed access routes, before the onsite inspection. The staking must include a center stake for the proposed well, two reference stakes, and a flagged access road centerline. Staking activities are considered casual use unless the particular activity is likely to cause more than negligible disturbance or damage. Off-road vehicular use for the purposes of staking is casual use unless, in a particular case, it is likely to cause more than negligible disturbance or damage, or otherwise prohibited.

On non-NFS lands, the BLM will invite the Surface Managing Agency and private surface owner, if applicable, to participate in the onsite inspection. If the surface is privately owned, the operator must furnish to the BLM the name, address, and telephone number of the surface owner if known. All parties who attend the onsite inspection will jointly develop a list of resource concerns that the operator must address in the APD. The operator will be provided a list of these concerns either during the onsite inspection or within 7 days of the onsite inspection. Surface owner concerns will be considered to the extent practical within the law. Failure to submit an APD within 60 days of the onsite inspection will result in the Notice of Staking being returned to the operator.

* * * * *

E. APD Posting and Processing

1. Posting

The BLM and the Federal Surface Managing Agency, if other than the BLM, must provide at least 30 days public notice before the BLM may approve an APD or Master Development Plan on a Federal oil and gas lease. Posting is not required for an APD for an Indian oil and gas lease or agreement. The BLM will post information about the APD or Notice of Staking for Federal oil and gas leases to the Internet and in an area of the BLM Field Office having jurisdiction that is readily accessible to the public. If the surface is managed by a Federal agency other than the BLM, that agency also is required to post the notice for at least 30 days. This would include the BIA where the surface is held in trust but the mineral estate is federally owned. The posting is for informational purposes only and is not an appealable decision. The purpose of the posting is to give any interested party notification that a Federal approval of mineral operations has been requested. The BLM or the FS will not post confidential information.

Reposting of the proposal may be necessary if the posted location of the proposed well is:

a. Moved to a different quarter-quarter section;

b. Moved more than 660 feet for lands that are not covered by a Public Land Survey; or

c. If the BLM or the FS determine that the move is substantial.

2. Processing

The timeframes established in this subsection apply to both individual APDs and to the multiple APDs included in Master Development Plans and to leases of Indian minerals as well as leases of Federal minerals.

If there is enough information to begin processing the application, the BLM (and the FS if applicable) will process it up to the point that missing information or uncorrected deficiencies render further processing impractical or impossible.

a. Within 10 days of receiving an application, the BLM (in consultation with the FS if the application concerns NFS lands) will notify the operator as to whether or not the application is complete. The BLM will request additional information and correction of any material submitted, if necessary, in the 10-day notification. If an onsite inspection has not been performed, the applicant will be notified that the application is not complete.

Within 10 days of receiving the application, the BLM, in coordination with the operator and Surface Managing Agency, including the private surface owner in the case of split estate minerals, will schedule a date for the onsite inspection (unless the onsite inspection has already been conducted as part of a Notice of Staking). The onsite inspection will be held as soon as practicable based on participants' schedules and weather conditions. The operator will be notified at the onsite inspection of any additional deficiencies that are discovered during the inspection. The operator has 45 days after receiving notice from the BLM to provide any additional information necessary to complete the APD, or the APD may be returned to the operator.

b. Within 30 days after the operator has submitted a complete application, including incorporating any changes that resulted from the onsite inspection, the BLM will:

1. Approve the application, subject to reasonable Conditions of Approval, if the appropriate requirements of the NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable law have been met and, if on NFS lands, the FS has approved the Surface Use Plan of Operations;

2. Notify the operator that it is deferring action on the permit; or

3. Deny the permit if it cannot be approved and the BLM cannot identify any actions that the operator could take that would enable the BLM to issue the permit or the FS to approve the Surface Use Plan of Operations, if applicable.

c. The notice of deferral in paragraph (b)(2) of this section must specify:

1. Any action the operator could take that would enable the BLM (in consultation with the FS if applicable) to issue a final decision on the application. The FS will notify the applicant of any action the applicant could take that would enable the FS to issue a final decision on the Surface Use Plan of Operations on NFS lands. Actions may include, but are not limited to, assistance with:

(A) Data gathering; and

(B) Preparing analyses and documents.

2. If applicable, a list of actions that the BLM or the FS need to take before making a final decision on the application, including appropriate analysis under NEPA or other applicable law and a schedule for completing these actions.

d. The operator has 2 years from the date of the notice under paragraph (c)(1) of this section to take the action specified in the notice. If the appropriate analyses required by NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable laws have been completed, the BLM (and the FS if applicable), will make a decision on the permit and the Surface Use Plan of Operations within 10 days of receiving a report from the operator addressing all of the issues or actions specified in the notice under paragraph (c)(1) of this section and certifying that all required actions have been taken. If the operator has not completed the actions specified in the notice within 2 years from the operator's receipt of the paragraph (c)(1) notice, the BLM will deny the permit.

e. For APDs on NFS lands, the decision to approve a Surface Use Plan of Operations or Master Development Plan may be subject to FS appeal procedures. The BLM cannot approve an APD until the appeal of the Surface Use Plan of Operations is resolved.

* * * * *

I. Waiver From Electronic Submission Requirements

The operator may request a waiver from the electronic submission requirement for an APD or Notice of Staking if compliance would cause hardship or the operator is unable to file these documents electronically. In the request, the operator must explain the reason(s) that prevents it from using the electronic system. The waiver request is subject to BLM approval. The BLM will not consider an APD or Notice of Staking that the operator did not submit through the electronic system, unless the BLM approves a waiver.

[FR Doc. 2016–17400 Filed 7–28–16; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58 and CC Docket No. 01–92; Report No. 3047]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration and clarification.

SUMMARY: Petitions for Reconsideration and Clarification (Petitions) have been filed in the Commission's rulemaking proceeding by Mary J. Sisak on behalf of Custer Telephone Cooperative, Inc., et al, Michael R. Romano on behalf of NTCA-The Rural Broadband Association, Robert W. Schwartz on behalf of Madison Telephone Company, Derrick B. Owens on behalf of WTA-Advocates For Rural Broadband.

DATES: Oppositions to the Petitions must be filed on or before August 15, 2016. Replies to an opposition must be filed on or before August 8, 2016.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Suzanne Yelen, Wireline Competition Bureau, (202) 418–7400, email: *Suzanne.Yelen@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 3047, released July 11, 2016. The full text of the Petitions is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 or may be accessed online via the Commission's Electronic Comment Filing System at *https://www.fcc.gov/ecfs/*. The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: Connect America Fund; ETC Annual Reports and Certifications; Developing an Unified Intercarrier Compensation Regime, FCC 16–33, published at 81 FR 24282, April 25, 2016, in WC Docket Nos. 10–90 and 14–58; CC Docket No. 01–92. This *Notice* is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 4.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–17900 Filed 7–28–16; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 81, No. 146
Friday, July 29, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Request for Nominations of Members for the National Agricultural Research, Extension, Education, and Economics Advisory Board and Specialty Crop Committee

AGENCY: Research, Education, and Economics, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces the solicitation for nominations to fill vacancies on the National Agricultural Research, Extension, Education, and Economics Advisory Board and its subcommittees. There are 7 vacancies on the NAREEE Advisory Board, 3 vacancies on the Specialty Crop Committee, 4 vacancies on the National Genetics Advisory Council, and 6 vacancies on the Citrus Disease Committee.

DATES: All nomination materials should be mailed in a single, complete package and postmarked by July 29, 2016.

ADDRESSES: The nominee's name, resume or CV, completed Form AD–755, and any letters of support must be submitted via one of the following methods:

(1) Email to *nareee@ars.usda.gov;* or

(2) By mail delivery service to Thomas Vilsack, Secretary, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250, Attn: NAREEE Advisory Board, Room 332A, Whitten Building.

FOR FURTHER INFORMATION CONTACT: Michele Esch, Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, 1400 Independence Avenue SW., Room 332A, The Whitten Building, Washington, DC 20250–2255, telephone: 202–720–3684; fax: 202–720–6199; email: *nareeeab@ars.usda.gov.* Committee Web site: *www.nareeeab.ree.usda.gov.*

SUPPLEMENTARY INFORMATION:

Instructions for Nominations

Nominations are solicited from organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests throughout the country. Nominations for one individual who fits several of the categories listed above, *or* for more than one person who fits one category, will be accepted.

In your nomination letter, please indicate the specific membership category for each nomine if applying for the NAREEE Advisory Committee and also specify what committee(s) you are sending your nomination is for. Each nominee must submit form AD–755, "Advisory Committee Membership Background Information" (which can be obtained from the contact person below or from: *http://www.ocio.usda.gov/sites/default/files/docs/2012/AD-755_Master_2012_508%20Ver.pdf*). All nominees will be vetted before selection.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure the recommendation of the Advisory Board take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the needs of all racial and ethnic groups, women and men, and persons with disabilities.

Please note that registered lobbyist and individuals already serving another USDA Federal Advisory Committee, are ineligible for nomination.

All nominees will be carefully reviewed for their expertise, leadership, and relevance. All nominees will be vetted before selection.

Appointments to the National Agricultural Research, Extension, Education, and Economics Advisory Board and its subcommittees will be made by the Secretary of Agriculture.

National Agricultural Research, Extension, Education, and Economics Advisory Board

The National Agricultural Research, Extension, Education, and Economics Advisory Board was established in 1996 via Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123) to provide advice to the Secretary of Agriculture and land-grant colleges and universities on top priorities and policies for food and agricultural research, education, extension, and economics. Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 was amended by the Farm Security and Rural Investment Act of 2002 to reduce the number of members on the National Agricultural Research, Extension, Education, and Economics Advisory Board to 25 members and required the Board to also provide advice to the Committee on Agriculture of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies of the Committee on Appropriations of the House of Representatives, and the Subcommittee on Agriculture, Rural Development and Related Agencies of the Committee on Appropriations of the Senate.

Since the Advisory Boards inception by congressional legislation in 1996, each member has represented a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, non-land grant college or university with a historic commitment to research in the food and agricultural sciences, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed by the Secretary of Agriculture in September 1996 and one-third of its members were appointed for a one, two, and three-year term, respectively. The terms for 7 members who represent specific categories will expire September 30, 2016. Nominations for a 3-year appointment for these 7 vacant categories are sought. All nominees will be carefully reviewed for their expertise, leadership, and relevance to a category.

The 7 slots to be filled are:

Category F. National Food Animal Science Society
Category G. National Crop, Soil, Agronomy, Horticulture, or Weed Science Society
Category L. 1890 Land-Grant Colleges and Universities
Category M. 1994 Equity in Education-Land Grant Institutions
Category P. American Colleges of Veterinary Medicine
Category T. Rural Economic Development
Category U. National Consumer Interest Group

Specialty Crop Committee

The Specialty Crop Committee was created as a subcommittee of the National Agricultural Research, Extension, Education, and Economics Advisory Board in 2004 in accordance with the Specialty Crops Competitiveness Act of 2004 under Title III, Section 303 of Public Law 108–465. The committee was formulated to study the scope and effectiveness of research, extension, and economics programs affecting the specialty crop industry. The legislation defines "specialty crops" as fruits, vegetables, tree nuts, dried fruits and nursery crops (including floriculture). The Agricultural Act of 2014 further expanded the scope of the Specialty Crop Committee to provide advice to the Secretary of Agriculture on the relevancy review process of the Specialty Crop Research Initiative, a granting program of the National Institute of Food and Agriculture.

Members should represent the breadth of the specialty crop industry. 6 members of the Specialty Crop Committee are also members of the National Agricultural Research, Extension, Education, and Economics Advisory Board and 6 members represent various disciplines of the specialty crop industry.

The terms of 3 members will expire on September 30, 2015. The Specialty Crop Committee is soliciting nominations to fill 3 vacant positions. Appointed members will serve 2–3 years with their terms expiring in September 2017 or 2018.

National Genetic Resources Advisory Council

The National Genetic Resources Advisory Council was re-established in 2012 as a permanent subcommittee of the National Agricultural Research, Extension, Education, and Economics (NAREEE) Advisory Board to formulate recommendations on actions and policies for the collection, maintenance, and utilization of genetic resources; to make recommendations for coordination of genetic resources plans of several domestic and international organizations; and to advise the Secretary of Agriculture and the National Genetic Resources Program of new and innovative approaches to genetic resources conservation. The National Genetic Resources Advisory Council will also advise the department on developing a broad strategy for maintaining plant biodiversity available to agriculture, and strengthening public sector plant breeding capacities.

The National Genetic Resources Advisory Council membership is required to have two-thirds of the appointed members from scientific disciplines relevant to the National Genetic Resources Program including agricultural sciences, environmental sciences, natural resource sciences, health sciences, and nutritional sciences; and one-third of the appointed members from the general public including leaders in fields of public policy, trade, international development, law, or management.

The terms of 4 members of the National Genetic Resources Advisory Council will expire on September 30, 2016. We are seeking nominations for a 4-year appointment effective October 1, 2016 through September 30, 2020. The 4 slots to be filled are to be composed of 3 scientific members and 1 general public member.

Citrus Disease Subcommittee

The Citrus Disease Subcommittee was established by the Agricultural Act of 2014 (Sec. 7103) to advise the Secretary of Agriculture on citrus research, extension, and development needs, engage in regular consultation and collaboration with USDA and other organizations involved in citrus, and provide recommendations for research and extension activities related to citrus disease. The Citrus Disease Subcommittee will also advise the Department on the research and extension agenda of the Emergency Citrus Disease Research and Extension Program, a granting program of the National Institute of Food and Agriculture.

The subcommittee is composed of 9 members who *must* be a producer of citrus with representation from the following States: Three members from Arizona or California, five members from Florida, and one member from Texas.

The terms of 6 Citrus Disease Subcommittee will expire on September 30, 2015. The Citrus Disease Subcommittee is soliciting nominations to fill 6 vacant positons for membership; 4 positions are to represent Florida and 2 positions are to represent California. Appointed members will serve 2–3 years with their terms expiring in September 2017 or 2018.

Done at Washington, DC, this 22nd day of July 2016.

Ann Bartuska,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 2016–17971 Filed 7–28–16; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sabine-Angelina Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sabine-Angelina Resource Advisory Committee (RAC) will meet in Hemphill, Texas. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcvCAAS.*

DATES: The meeting will be held on Thursday, August 18, 2016, at 3:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Sabine Ranger District, 5050 State Highway 21 East, Hemphill, Texas.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Sabine Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Becky Nix, RAC Coordinator, by phone at 409–625–1940 or via email at *bnix@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Approve Minutes from July 14, 2016 Meeting;
2. Discuss/Recommend/Approve new projects;

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Friday, August 12, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Becky Nix, RAC Coordinator, Sabine-Angelina Resource Advisory Committee, 5050 State Highway 21 E, Hemphill, Texas 75948; by email to *bnix@fs.fed.us,* or via facsimile to 409–625–1953.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled *For Further Information Contact.* All reasonable accommodation requests are managed on a case by case basis.

Dated: July 25, 2016.

Kimpton M. Cooper,

Designated Federal Officer, Sabine-Angelina RAC.

[FR Doc. 2016–17964 Filed 7–28–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Forest Industries and Logging Operations Data Collection Systems

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal of a currently approved information collection, Forest Industries and Residential Fuelwood and Post Data Collection Systems with a revision adding a Logging Operations Data Collection System.

DATES: Comments must be received in writing on or before September 27, 2016 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Attn: Consuelo Brandeis, Southern Research Station, Forest Inventory and Analysis, 4700 Old Kingston Pike, Knoxville, TN 37919.

Comments also may be submitted via facsimile to 865–862–0262 or by email to: *cbrandeis@fs.fed.us.*

The public may inspect comments received at the Southern Research Station, 4700 Old Kingston Pike, Knoxville, TN during normal business hours. Visitors are encouraged to call ahead to 865–862–2000 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Consuelo Brandeis, Southern Research Station, at 865–862–2028. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Forest Industries and Logging Operations Data Collection Systems.

OMB Number: 0596–0010.

Expiration Date of Approval: September 30, 2016.

Type of Request: Extension with Revision.

Abstract: The Forest and Range Renewable Resources Planning Act of 1974 and the Forest and Rangeland Renewable Resources Research Act of 1978 require the Forest Service to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of these resources from the Nation's forest resource. To collect this information, Forest Service or State natural resource agency personnel use three questionnaires, two of which are collected by personal mill visits or phone calls, or which respondents return in self-addressed, postage pre-paid envelopes, or by email. The logging operations questionnaire will be delivered in person by field personnel collecting tree utilization data at sampled logging sites.

Pulpwood Received Questionnaire: Forest Service personnel use this questionnaire to collect and evaluate information from pulp and composite panel mills in order to monitor the volume, types, species, sources, and prices of timber products harvested throughout the Nation. The data collected will be used to provide essential information about the current use of the Nation's timber resources for pulpwood industrial products and is not available from other sources.

Logs and Other Roundwood Received Questionnaire: This questionnaire is used by Forest Service or State natural resource agency personnel to collect and evaluate information from the other, non-pulp or composite panel, primary wood-using mills, including small, part-time mills, as well as large corporate entities. Primary wood-using mills are facilities that use harvested wood in log or chip form, such as sawlogs, veneer logs, posts, and poles, to manufacture a secondary product, such as lumber or veneer. Forest Service personnel evaluate the information collected and use it to monitor the volume types, species, sources, and prices of timber products harvested throughout the Nation.

Logging Operations Questionnaire: This questionnaire is used by Forest Service or State natural resource agency personnel to collect and evaluate information from logging operations, to help characterize the logging industry and its response to outside influences. The information will be used to measure the health of the logging industry as well as to provide background information for decision-making.

	Pulpwood received questionnaire	Logs and other roundwood received questionnaire	Logging operations questionnaire
Estimate of Annual Burden Hours	35 minutes (0.58)	38 minutes (0.64)	12 minutes (0.2).
Type of Respondents	Primary users of industrial pulpwood.	Primary users of industrial roundwood products.	Loggers.
Estimated Annual Average Number of Respondents	183	1,788	435.
Estimated Annual Average Number of Responses per Respondent.	1	1	1.

	Pulpwood received questionnaire	Logs and other roundwood received questionnaire	Logging operations questionnaire
Estimated Total Annual Average Burden Hours on Respondents.	106 hours	1,144 hours	87 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Carlos Rodriguez Franco,

Acting Associate Deputy Chief, Research & Development.

[FR Doc. 2016–17862 Filed 7–28–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ontonagon Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ontonagon Resource Advisory Committee (RAC) will meet in Ewen, Michigan. The Committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the Title II of the Act. RAC information can be found at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_Page?id=001t0000002JcvqAAC.*

DATES: The meeting will be held on August 30, 2016, from 9:30 a.m. to 4:00 p.m. Eastern Standard Time.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Ewen-Trout Creek School, 14312 Airport Road, Ewen, Michigan.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Ottawa National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lisa Klaus, RAC Coordinator, by phone at 906–932–1330 ext. 328 or via email at *lklaus@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Identify new RAC committee members,
2. Review and approve the RAC's operating guidelines,
3. Elect a new chairperson, and
4. Review and recommend projects for Title II funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 16, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Attention: Lisa Klaus, RAC Coordinator, Ottawa National Forest Supervisor's Office, E6248 US Hwy. 2, Ironwood, Michigan 49938; by email to *lklaus@fs.fed.us,* or via facsimile to 906–932–0122.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: July 20, 2016.

Linda L. Jackson,

Forest Supervisor.

[FR Doc. 2016–17966 Filed 7–28–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Assessment Report of Ecological, Social and Economic Conditions, Trends and Sustainability for the Manti-La Sal National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of initiating the Assessment phase of the Forest Plan revision for the Manti-La Sal National Forest.

SUMMARY: The Manti-La Sal National Forest (Forest), located in central and southeastern Utah and southwestern Colorado, is initiating the first phase of the Forest Planning process pursuant to the 2012 National Forest System Land Management Planning rule (36 CFR part 219). This process will result in a revised forest land management plan (Forest Plan) which provides strategic direction for management of resources on the Manti-La Sal National Forest for the next fifteen years. The first phase of the planning process involves assessing ecological, social and economic conditions and trends in the planning area and documenting the findings in an Assessment report.

The Assessment phase is just beginning on the Manti-La Sal National Forest and interested parties are invited to contribute to the development of the Assessment. The Forest will be hosting public meetings to explain the revision process and invite the public to share information relevant to the Assessment. At the public meetings the Forest will seek sources of existing information and local knowledge of current conditions and trends in the natural resources,

social values, and goods and services produced by lands within the Manti-La Sal National Forest.

DATES: Public meetings to discuss development of the Assessment will be held in September 2016. Dates and locations will be posted on the Forest Web site (*http://www.fs.usda.gov/detail/mantilasal/landmanagement/planning/?cid=fseprd509713*) and mailed to individuals and organizations on the mailing list. A draft of the Assessment report is anticipated to be posted at the Web site cited above in early 2017. Following completion of the Assessment, the Forest will initiate procedures pursuant to the National Environmental Policy Act (NEPA) to prepare and evaluate a revised Forest Plan.

ADDRESSES: Written correspondence can be sent to: Manti-La Sal National Forest, Attn: Forest Plan Revision, 599 West Price River Drive, Ste. A, Price, UT 84501; or emailed to *mlnfplanrevision@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Blake Bassett, Forest Plan Revision Partnership Coordinator, at the mailing address above; or call 435–636–3508. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday. More information on our plan revision process is available on the Forest's planning Web site at *http://www.fs.usda.gov/detail/mantilasal/landmanagement/planning/?cid=fseprd509713*. You may also contact us by email at: *mlnfplanrevision@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The National Forest Management Act (NFMA) of 1976 requires that every National Forest System (NFS) unit develop and periodically revise a Forest Plan. The procedures for doing this are in federal regulation ("Planning Rule," 36 CFR 219) and in Forest Service directives. Forest Plans provide strategic direction for managing forest resources for around fifteen years, and are adaptive and amendable as conditions change over time.

Under the Planning Rule, an Assessment of ecological, social, and economic conditions and trends in the planning area is the first phase of a 3-phase planning process (36 CFR 219.6). The second phase is guided, in part, by the National Environmental Policy Act (NEPA). It includes preparation of a draft revised Forest Plan, one or more alternatives to the draft plan, and a draft environmental impact statement (DEIS) for public review and comment. This is followed by a final environmental impact statement (FEIS) and draft decision. The draft decision is subject to the objection procedures of 36 CFR part 219, subpart B, before it can be finalized. The third phase of the process is implementation and monitoring, which is ongoing over the life of the revised Forest Plan.

This notice announces the start of the Manti-La Sal National Forest's Assessment process. The Assessment will rapidly evaluate existing information about relevant ecological, economic, cultural and social conditions, trends and sustainability and their relationship to the current Forest Plan within the context of the broader landscape. The Assessment does not include any decisions or require any actions on the ground. Its purpose is to provide a solid base of information that will be used to identify preliminary needs for change in the current Forest Plan, and to inform development of a revised plan.

With this notice, the Manti-La Sal National Forest invites other governments, non-governmental parties, and the public to contribute to Assessment development. The intent of public participation during this phase is to identify as much relevant information as possible to inform the plan revision process. We also encourage contributors to share their concerns and perceptions of risk to social, economic, and ecological systems in or connected to the planning area.

As public engagement opportunities are scheduled, public announcements will be made and information will be posted on the Forest's Web site: *http://www.fs.usda.gov/detail/mantilasal/landmanagement/planning/?cid=fseprd509713*. To contribute information or ask to be added to our mailing list, please call 435–636–3508 or email *mlnfplanrevision@fs.fed.us*.

Responsible Official

The responsible official for the revision of the land management plan for the Manti-La Sal National Forest is the Forest Supervisor, Mark Pentecost, Manti-La Sal National Forest, 599 West Price River Drive, Ste. A, Price, Utah 84501.

Dated: July 25, 2016.

Brian M. Pentecost,

Forest Supervisor.

[FR Doc. 2016–17949 Filed 7–28–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2016–0005]

Mountain Run Watershed Dam No. 50, Culpeper County, Virginia

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA).

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102[2][c] of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations, and the Natural Resources Conservation Service Regulations, NRCS gives notice that an environmental impact statement is not being prepared for the rehabilitation of Mountain Run Watershed Dam No. 50, Culpeper County, Virginia.

FOR FURTHER INFORMATION CONTACT: John A. Bricker, State Conservationist, Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229. Telephone (804) 287–1691, email *jack.bricker@va.usda.gov*.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, John A. Bricker, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing multi-purpose flood control and water supply structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the various Federal, State, and local agencies and interested parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting John A. Bricker at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Signed this 18th day of July, 2016, in Richmond, Virginia.

John A. Bricker,

State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 2016–17975 Filed 7–28–16; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Baldrige Performance Excellence Program (BPEP) Team Leader Consensus and Team Leader Site Visit Information Collections.

OMB Control Number: #0693–XXXX. This is a new collection.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 480.

Average Hours per Response: 10 minutes.

Burden Hours: 80 Hours (480 X 10 minutes per response = 80 Hours).

Needs and Uses: The Baldrige Performance Excellence Program (BPEP) staff members need to survey the Baldrige Examiners to understand what roles they are willing and able to take on, what travel assignments they can handle, and what input they have on the skills of other examiners and improvements to the processes in which they participate. This evaluative data is the way the program decides which examiner should be elevated to team leadership responsibility and which skills need to be taught at examiner training in the next year.

The purpose of the information is to help staff collect data on the skills of the examiners, including alumni examiners, in order to best manage training and selection. Because the examiner selection process is so competitive, examiners need to demonstrate competencies suchas understanding the Baldrige Criteria, team skills, and writing skills. The program also needs to collect peer-based information to understand an examiner's skill level in order to make decisions on whether the examiner should be elevated to "senior examiner" and therefore team leader. The blinded data will be shared with the team leader for improvement purposes, and for future assignments.

Affected Public: Individual or Households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: July 26, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–18037 Filed 7–28–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–48–2016]

Foreign-Trade Zone (FTZ) 38—Spartanburg, South Carolina; Notification of Proposed Production Activity; Benteler Automotive Corporation (Automotive Suspension and Body Components); Duncan, South Carolina

The South Carolina State Ports Authority, grantee of FTZ 38, submitted a notification of proposed production activity to the FTZ Board on behalf of Benteler Automotive Corporation (Benteler), located in Duncan, South Carolina. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 28, 2016.

Benteler already has authority to produce automotive suspension and body components within Subzone 38F. The current request would add one finished product to the existing scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Benteler from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, Benteler would be able to choose the duty rates during customs entry procedures that apply to instrument panel supports (duty rate 2.5%) for the foreign-status materials/components in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 7, 2016.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: July 25, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–18019 Filed 7–28–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–103–2016]

Foreign-Trade Zone 24—Pittston, Pennsylvania; Application for Subzone; Michaels Stores Procurement Company, Inc.; Hazleton, Pennsylvania

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Eastern Distribution Center, Inc., grantee of FTZ 24, requesting subzone status for the facility of Michaels Stores Procurement Company, Inc., located in Hazleton, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on July 26, 2016.

The proposed subzone (77.8 acres) is located at 60 Green Mountain Road, Hazleton. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 24.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 7, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 22, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: July 26, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–18024 Filed 7–28–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Donald V. Bernardo, a/k/a Don Bernardo, 8930 Houston Ridge Road, Charlotte, NC 28277; Order

On December 6, 2013, the then-Acting Director of the Office of Exporter Services, Eileen M. Albanese, entered an Order[1] denying Donald V. Bernardo ("Bernardo") all U.S. export privileges until November 16, 2016, pursuant to Section 11(h) of the Export Administration Act[2] and Section 766.25 of the Export Administration Regulations,[3] and based on a criminal conviction of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) ("AECA").

Whereas, the December 6, 2013 Order identified Bernardo's address as "701 Fredericksburg Road, Mathews, NC 28105";

Whereas, the Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce ("Department"), has confirmed that the address is no longer correct, and that Bernardo's current address is "8930 Houston Ridge Road, Charlotte, NC 28277"; and

Whereas, as a result of the information the Department obtained regarding Bernardo's current address, the Department has requested that an order be issued amending the December 6, 2013 Order to reflect that new address for Bernardo;

Accordingly, it is hereby ordered that the December 6, 2013 Order denying all U.S. export privileges to Donald V. Bernando is amended by deleting the address "701 Fredericksburg Road, Mathews, NC 28105," and by adding the address "8930 Houston Ridge Road, Charlotte, NC 28277". In all other aspects, the December 6, 2013 Order remains in full force and effect.

This Order, which is effective immediately, shall be published in the **Federal Register**.

Dated: July 19, 2016.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2016–17681 Filed 7–28–16; 8:45 am]

BILLING CODE P

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[1] 78 FR 76103 (Dec. 16, 2013).

[2] 50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2015 (80 FR 48,233 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

[3] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2016).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Application for NATO International Competitive Bidding

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 27, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS Liaison, (202) 482–8093, *Mark.Crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Opportunities to bid for contracts under the North Atlantic Treaty Organization (NATO) Security Investment Program (NSIP) are only open to firms of member NATO countries. NSIP procedures for international competitive bidding (AC/4–D/2261) require that each NATO country certify that their respective firms are eligible to bid on such contracts. This is done through the issuance of a "Declaration of Eligibility." The U.S. Department of Commerce, Bureau of Industry and Security (BIS) is the executive agency responsible for certifying U.S. firms. The BIS–4023P is the application form used to collect information needed to ascertain the eligibility of a U.S. firm. BIS will review applications for completeness and accuracy, and determine a company's eligibility based on its financial viability, technical capability, and security clearances with the U.S. Department of Defense.

II. Method of Collection

Submitted electronically or on paper.

III. Data

OMB Control Number: 0694–0128.

Form Number(s): BIS–4023P

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Cost to Public: $2,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 26, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–17947 Filed 7–28–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–824]

Certain Cold-Rolled Steel Flat Products From the United Kingdom: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that certain cold-rolled steel flat products (cold-rolled steel) from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2014, through June 30, 2015. The final dumping margins of sales at LTFV are listed below in the "Final Determination" section of this notice.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2016, the Department published the *Preliminary Determination* of this antidumping duty (AD) investigation.[1] The following events occurred since the *Preliminary Determination* was issued.

In March 2016, the Department received supplemental cost responses from Tata Steel UK Ltd. (TSUK), one of the mandatory respondents in this investigation.[2]

In June 2016, AK Steel (one of the petitioners),[3] Caparo Precision Strip, Ltd. (Caparo), and TSUK submitted case briefs[4] and rebuttal briefs.[5] A hearing was held on June 21, 2016.

Scope of the Investigation

The product covered by this investigation is cold-rolled steel from the United Kingdom. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[6] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the records of the cold-rolled steel investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[7] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice.[8] A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in March and April 2016, the Department verified the sales and cost data reported by the mandatory respondents, pursuant to section 782(i) of the Act. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by the respondents.[9]

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[1] *See Certain Cold-Rolled Steel Flat Products From the United Kingdom: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 81 FR 11744 (March 7, 2016) (*Preliminary Determination).*

[2] *See* Letter from TSUK, "Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: TSUK's Section D Second Supplemental Questionnaire Response" (March 11, 2016).

[3] AK Steel Corporation (AK Steel), ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners).

[4] *See* Letter from the petitioners, "Certain Cold-Rolled Steel Flat Products From The United Kingdom/Petitioner's Case Brief" (June 8, 2016); Letter from Caparo, "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Case Brief of Caparo Precision Strip, Ltd." (June 8, 2016); and Letter from TSUK, "Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: Case Brief of Tata Steel UK Ltd. and Tata Steel International (Americas) Inc." (June 8, 2016).

[5] *See* Letter from the petitioners, "Certain Cold-Rolled Steel Flat Products From The United Kingdom/Petitioner's Rebuttal Brief" (June 13, 2016); Letter from Caparo, "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Caparo Precision Strip, Ltd. Rebuttal Brief" (June 13, 2016); and Letter from TSUK, "Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom: Rebuttal Brief of Tata Steel UK Ltd. and Tata Steel International (Americas) Inc." (June 13, 2016).

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations" dated February 29, 2016 (Preliminary Scope Decision Memorandum).

[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: "Final Scope Comments Decision Memorandum," dated May 16, 2016 (Final Scope Decision Memorandum).

[8] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom" (July 20, 2016) (Issues and Decision Memorandum).

[9] *See* Memorandum to the File entitled "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Caparo Precision Strip, Ltd.," dated April 1, 2016, Memorandum to the File entitled "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Tata Steel UK Ltd.," dated April 4, 2016, Memorandum to the File entitled "Certain Cold-Rolled Steel Flat Products from the United Kingdom: Constructed-Export-Price Sales Verification of Tata Steel UK Ltd.," dated May 4, 2016, Memorandum to the File entitled "Certain Cold-Ro11ed Steel Flat Products from the United Kingdom: Constructed-Export-Price Sales Verification of Caparo Precision Strip, Ltd.," dated May 5, 2016, Memorandum to the File entitled "Verification of the Cost Response of Caparo Precision Strip, Ltd., in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom," dated May 31,

Continued

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for Caparo and TSUK. For a discussion of these changes, *see* the "Margin Calculations" and "Comparisons to Fair Value" sections of the Issues and Decision Memorandum. We have also revised the all-others rate.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins, and margins determined entirely under section 776 of the Act. Therefore, we calculated the all-others rate based on a weighted average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration.[10]

Final Determination

The Department determines that the final weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (percent)
Caparo Precision Strip, Ltd./Liberty Performance Steels Ltd.[11]	5.40
Tata Steel UK Ltd	25.56
All-Others	22.92

Disclosure

We intend to disclose the calculations performed to interested parties within five days of the public announcement of this final determination in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of cold-rolled steel from the United Kingdom, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after March 7, 2016, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**.

Further, pursuant to section 735(c)(1)(B)(ii) of the Act, CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price, as follows: (1) For the exporters/producers listed in the table above, the cash deposit rates will be equal to the dumping margin which the Department determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 22.92 percent, as discussed in the "All Others Rate" section, above. These instructions suspending liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of cold-rolled steel from the United Kingdom no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: July 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

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2016, and Memorandum to the File entitled "Verification of the Cost Response of Tata Steel UK Ltd. in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the United Kingdom," dated May 31, 2016.

[10] We followed our normal practice, which is, with two respondents, we calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We then compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[11] We determined that Liberty Performance Steels Ltd. is the successor-in-interest to Caparo Precision Strip, Ltd. *See* Issues and Decision Memorandum at Comment 7.

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;[12]
- Tool steels;[13]
- Silico-manganese steel;[14]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.[15]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.[16]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Margin Calculations
V. Comparisons to Fair Value
VI. Discussion of Issues
  Comment 1: Level of Trade (TSUK)
  Comment 2: Home-Market Freight Revenue (TSUK)
  Comment 3: CEP Credit Expense (TSUK)
  Comment 4: Home-Market Credit Expense (Caparo)
  Comment 5: Quality Codes (Caparo)
  Comment 6: Date of Sale (Caparo)
  Comment 7: Successor-in-Interest (Caparo)
  Comment 8: Restructuring and Impairment Costs (TSUK)
  Comment 9: Raw Materials Costs (TSUK)
  Comment 10: Energy Costs (TSUK)
  Comment 11: Verification Corrections (TSUK)
  Comment 12: Verification Corrections (Caparo)
VII. Recommendation

[FR Doc. 2016–17940 Filed 7–28–16; 8:45 am]

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[12] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[13] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[14] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[15] *See Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42501, 42503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[16] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71741, 71741–42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–866]

Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From India: Final Affirmative Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain cold-rolled steel flat products (cold-rolled steel) from India as provided in section 705 of the Tariff Act of 1930, as amended (the Act). For information on the subsidy rates, *see* the "Final Determination" section of this notice. The period of investigation is January 1, 2014 through December 31, 2014.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Erin Kearney, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0167.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on December 22, 2015.[1] A summary of the events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Scope of the Investigation

The products covered by this investigation are cold-rolled steel flat products from India. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[3] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the records of the cold-rolled steel investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[4] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix I.

Use of Adverse Facts Available

In making this final determination, the Department relied, in part, on facts available and, because JSW Steel Limited (JSWSL) did not act to the best of its ability in responding to the Department's requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.[5] For further information, *see* the section "Use of Facts Otherwise Available and Adverse Inferences" in the accompanying Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our analysis of the comments received from parties, and the minor corrections presented, and additional items discovered, at verification, we made certain changes to the respondent's subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a subsidy rate for JSWSL (and its cross-owned company JSW Steel Coated Products Ltd. (JSCPL)), the exporter/producer of subject merchandise selected for individual examination in this investigation.

In accordance with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an "all-others" rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as respondents with those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated, as well as any rates determined entirely under section 776 of the Act. Because the only individually calculated rate is the rate calculated for JSWSL and JSCPL, in accordance with section 705(c)(5)(A)(i) of the Act, the rate calculated for JSWSL and JSCPL is assigned as the "all-others" rate. The estimated countervailable subsidy rates are as follows:

Company	Subsidy rate
JSW Steel Limited and JSW Steel Coated Products Limited.	10.00 percent *ad valorem.*
All-Others	10.00 percent *ad valorem.*

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[1] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From India: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 80 FR 79562 (December 22, 2015) (*Preliminary Determination*).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India" (Issues and Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," dated February 29, 2016.

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: "Final Scope Comments Decision Memorandum," dated May 16, 2016.

[5] *See* sections 776(a) and (b) of the Act.

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from India that were entered, or withdrawn from warehouse, for consumption on or after December 22, 2015, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 20, 2016, but to continue the suspension of liquidation of all entries from December 22, 2015 through April 19, 2016.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders (APOs)

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This determination and notice are issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Subsidies Valuation
V. Benchmarks and Discount Rates
VI. Use of Facts Otherwise Available and Adverse Inferences
VII. Analysis of Programs
VIII. Analysis of Comments
  Comment 1: Application of AFA to JSW Steel (Salav) Ltd.
  Comment 2: Calculation of Benefits Under the Export Promotion of Capital Goods Scheme
  Comment 3: JSCPL's Electricity Duty Exemptions
  Comment 4: Adjustment to Export Sales Denominators
  Comment 5: Rounding of Program Rates
IX. Recommendation

Appendix II—Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels; [1]
- Tool steels; [2]
- Silico-manganese steel; [3]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland.*[4]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.*[5]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–17948 Filed 7–28–16; 8:45 am]

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[1] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[2] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[3] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[4] *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42501, 42503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[5] *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71741, 71741–42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

DEPARTMENT OF COMMERCE

International Trade Administration

Dana-Farber Cancer Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 15–047. Applicant: Dana-Farber Cancer Institute, Boston, MA 02210. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 81 FR 11517, March 4, 2016.

Docket Number: 15–051. Applicant: Iowa State University of Science and Technology, Ames, IA 50011–3020. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic and Great Britain. Intended Use: See notice at 81 FR 32724, May 24, 2016.

Docket Number: 15–054. Applicant: University of Connecticut Health Center, Farmington, CT 06030. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 81 FR 11517, March 4, 2016.

Docket Number: 15–056. Applicant: St. Jude Children's Research Hospital, Memphis, TN 38105. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: See notice at 81 FR 11517, March 4, 2016.

Docket Number: 15–059. Applicant: Rutgers University, Piscataway, NJ 00854. Instrument: Low Temperature Scanning Tunneling Microscope. Manufacturer: Unisoku, Japan. Intended Use: See notice at 81 FR 11517, March 4, 2016.

Docket Number: 15–060. Applicant: Kent State University, Kent, OH 44242. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 81 FR 11517, March 4, 2016.

Docket Number: 16–003. Applicant: Oregon Health and Science University, Portland, OR 97239. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 81 FR 32724–25, May 24, 2016.

Docket Number: 16–006. Applicant: Texas Southwestern Medical Center, Dallas, TX 75390. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 81 FR 32724–25, May 24, 2016.

Docket Number: 16–009. Applicant: Stanford University, Stanford, CA 94305–5126. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 81 FR 32724, May 24, 2016.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: July 22, 2016.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Enforcement and Compliance.

[FR Doc. 2016–18018 Filed 7–28–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–821–823]

Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain cold-rolled steel flat products (cold-rolled steel) from the Russian Federation (Russia). For information on the estimated subsidy rates, *see* the "Final Determination" section of this notice. The period of investigation (POI) is January 1, 2014, through December 31, 2014.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson (the NLMK Companies) and Stephanie Moore (the Severstal Companies), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4793 and (202) 482–3692, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on December 22, 2015.[1] On July 1, 2016, the Department issued a Post-Preliminary Decision Memorandum with respect to the Provision of Mining Rights for Less Than Adequate Remuneration (LTAR) program.[2] A complete summary of the events that occurred since the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is hereby adopted by this notice.[3] The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version identical in content.

Scope of the Investigation

The products covered by this investigation are cold-rolled steel flat products from Russia. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[4] the Department set aside a period of time for parties to address the scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the records of the cold-rolled steel investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[5] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix I.

Use of Adverse Facts Available

In making this final determination, the Department relied, in part, on facts available with regard to specificity of the Provision of Natural Gas for LTAR, to specificity of the Provision of Mining Rights for LTAR program, and to the Severstal Companies' use of the Tax Deduction for Exploration Expenses. Because neither the Government of Russia nor the Severstal Companies acted to the best of their ability in responding to the Department's requests for certain information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.[6] For further information, *see* the section "Use of Facts Otherwise Available and Adverse Inferences" in the accompanying Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our analysis of the comments received from parties and the minor corrections presented, and additional items discovered at verification, we made certain changes to the respondents' subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

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[1] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 80 FR 79564 (December 22, 2015) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum To Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, titled "Decision Memorandum for the Post-Preliminary Analysis of Program Which Required More Information at the Preliminary Determination: Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation," dated July 1, 2016 (Post-Preliminary Decision Memorandum).

[3] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Issues and Decision Memorandum for the Final Determination," dated concurrently with this notice (Issues and Decision Memorandum).

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," dated February 29, 2016.

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: "Final Scope Comments Decision Memorandum," dated May 16, 2016.

[6] *See* sections 776(a) and (b) of the Act.

Final Negative Determination of Critical Circumstances

As discussed in the *Preliminary Determination,* on October 30, 2015, Petitioners[7] filed a timely critical circumstances allegation, pursuant to section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of cold-rolled steel from Russia.[8] We continue to determine that critical circumstances do not exist for the NLMK Companies, the Severstal Companies, and all other producers/exporters of subject merchandise in Russia. A discussion of our negative determination of critical circumstances can be found in the Issues and Decision Memorandum at the section, "Final Determination of Critical Circumstances."

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for the NLMK Companies and the Severstal Companies, the exporters/producers of subject merchandise selected for individual examination in this investigation.

In accordance with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an "all-others" rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents with those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated, as well as any rates determined entirely under section 776 of the Act. In this investigation, the only non-*de minimis* rate is the rate calculated for the NLMK Companies. Consequently, the rate calculated for the NLMK Companies is assigned as the all others rate. On this basis, the estimated countervailable subsidy rates are as follows:

Company	Subsidy rate
Novolipetsk Steel OJSC, Novex Trading (Swiss) S.A., Altai-Koks OJSC, Dolomite OJSC, Stoilensky OJSC, Studenovskaya (Stagdok) OJSC, Trading House LLC, Vtorchermet NLMK LLC, Vtorchermet OJSC, and Vtorchermet NLMK Center LLC (collectively, the NLMK Companies).	6.95 percent *ad valorem.*
PAO Severstal, Severstal Export GmbH, JSC Karelsky Okatysh, AO OLKON, AO Vorkutaugol, and JSC Vtorchermet (collectively, the Severstal Companies).	0.62 percent *ad valorem* (*de minimis*).
All Others	6.95 percent *ad valorem.*

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our affirmative *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of cold-rolled steel from Russia, other than subject merchandise produced/exported by the Severstal Companies which received a preliminary *de minimis* countervailing duty rate, that were entered or withdrawn from warehouse, for consumption, on or after December 22, 2015, the date of publication of the *Preliminary Determination* in the **Federal Register**.[9] In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 20, 2016, but to continue the suspension of liquidation of all entries from December 22, 2015 through April 19, 2016.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders (APOs)

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination and notice are issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Final Determination of Critical Circumstances
IV. Scope of the Investigation
V. Subsidies Valuation
VI. Benchmarks and Discount Rates
VII. Use of Facts Otherwise Available and

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[7] Petitioners are ArcelorMittal USA LLC, United States Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., California Steel Industries, and AK Steel Corporation.

[8] *See Preliminary Determination,* 80 FR at 79565.

[9] *See Preliminary Determination,* 80 FR at 79565.

Adverse Inferences
VIII. Analysis of Programs
IX. Analysis of Comments
  Comment 1: Whether Gazprom Is a Government Authority
  Comment 2: Whether the Provision of Natural Gas for LTAR Is *De Facto* Specific
  Comment 3: Whether the Natural Gas Market in Russia Is Distorted
  Comment 4: Standard Applied to Select a Tier Two Benchmark
  Comment 5: Availability of Tier Two Natural Gas Prices to Purchasers in Russia
  Comment 6: Comparability Adjustments to a Tier Two Benchmark
  Comment 7: Whether the Department Should Use a Tier Three Benchmark
  Comment 8: Whether to Adjust the Natural Gas Benchmark to Reflect Revised Data
  Comment 9: Whether the NLMK Companies Benefited from the Provision of Mining Rights
  Comment 10: Whether Timing of the Post-Preliminary Decision Memorandum Violated Interested Parties Due Process Rights
  Comment 11: Whether the GOR's Provision of Mining Rights Constitutes General Infrastructure that Is Not Countervailable
  Comment 12: Whether the GOR Acted to the Best of Its Ability With Regard to Usage Data Provided in Connection with the Provision of Mining Rights for LTAR Program
  Comment 13: Whether the Provision of Mining Rights Is Specific
  Comment 14: Whether the Mining Rights for LTAR Program Confers Recurring Benefits
  Comment 15: Use of Mining Rights—Not Coal—to Measure the Benefit
  Comment 16: Whether to Deduct Costs from the Coal Benchmark Rather than Adding Costs to the Extraction Price Paid by the Severstal Companies
  Comment 17: Revisions to Coal Benchmark Price Calculated in Post-Preliminary Decision Memorandum
  Comment 18: Whether to Countervail the Severstal Companies' Tax Debt Write-Offs
  Comment 19: Reduction in Extraction Payments Program
  Comment 20: Whether the Tax Deduction for Exploration Expenses Is Specific
  Comment 21: Whether to Apply Adverse Facts Available With Regard to the Benefit the Severstal Companies Received Under the Tax Deduction for Exploration Expenses Program
  Comment 22: Applicable *De Minimis* Rate for Russian CVD Proceedings
  Comment 23: Use of the NLMK Companies' Verified Sales Data
  Comment 24: Calculation of the Severstal Companies' Sales Denominator
X. Recommendation

Appendix II—Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these investigation:

- Ball bearing steels; [10]
- Tool steels; [11]
- Silico-manganese steel; [12]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.[13]

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[10] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[11] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[12] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[13] *See Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-

Continued

- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.*[14]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–17937 Filed 7–28–16; 8:45 am]

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rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[14] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71,741, 71,741–42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–865]

Certain Cold-Rolled Steel Flat Products From India: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") determines that imports of certain cold-rolled steel flat products ("cold-rolled steel") from India are being, or are likely to be, sold in the United States at less than fair value ("LTFV"). The final estimated weighted-average dumping margins of sales at LTFV are listed below in the section entitled "Final Determination Margins." The period of investigation ("POI") is July 1, 2014, through June 30, 2015.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Patrick O'Connor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0989.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** the preliminary determination on March 7, 2016.[1] A summary of the events that have occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are cold-rolled steel from India. For a full description of the scope of the investigation, *see* Appendix I to this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[3] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted on the records of the cold-rolled steel investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[4] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum accompanying this notice, and which is hereby adopted by this notice. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the "Act"), in February and March 2016, the Department verified the sales and cost data reported by the collapsed entity JSW Steel Limited ("JSWSL")/JSW

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[1] *See Certain Cold-Rolled Steel Flat Products From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures,* 81 FR 11741 (March 7, 2016) ("*Preliminary Determination*").

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance "Certain Cold-Rolled Steel Flat Products from India: Issues and Decision Memorandum for the Final Determination of Sales at Less-Than-Fair-Value," dated concurrently with this notice ("Issues and Decision Memorandum").

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determination," dated February 29, 2016 ("Preliminary Scope Decision Memorandum").

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Final Scope Comments Decision Memorandum," dated May 16, 2016 ("Final Scope Decision Memorandum").

Coated Products Limited ("JSCPL") (collectively "JSW"),the sole mandatory respondent in this investigation, pursuant to section 782(i) of the Act. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by JSW.

Changes to the Dumping Margin Calculations Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculation for JSW. For a discussion of these changes, *see* the Issues and Decision Memorandum. We have also revised the all-others rate.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated "all-others" rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* dumping margins, and any dumping margins determined entirely under section 776 of the Act. We based our calculation of the "all-others" rate on the dumping margin calculated for JSW, the only mandatory respondent in this investigation.

Final Determination Margins

The Department determines that the following estimated weighted-average dumping margin exists:

Exporter/Manufacturer	Weighted-average dumping margins (percent)	Cash deposit rate (percent)
JSW Steel Limited/JSW Coated Products Limited	7.60	6.70
All-Others	7.60	6.70

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all entries of cold-rolled steel from India which were entered, or withdrawn from warehouse, for consumption on or after March 7, 2016, the date of publication of the *Preliminary Determination*. We also will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as indicated in the table above, adjusted, where appropriate, for export subsidies.

Where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit less the amount of the countervailing duty determined to constitute any export subsidies. Therefore, in the event that a countervailing duty order is issued and suspension of liquidation is resumed in the companion countervailing duty investigation on cold-rolled steel from India, the Department will instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above. Until such suspension of liquidation is resumed in the companion countervailing duty investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping duty investigation will be the rates identified in the weighted-average margin column in the rate chart, above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission ("ITC") of our final determination. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine within 45 days of the final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that such injury exists, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders ("APOs")

This notice will serve as a reminder to parties subject to APOs of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i) of the Act.

Dated: July 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the

scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;[5]
- Tool steels;[6]
- Silico-manganese steel;[7]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.[8]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.[9]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II

List of Topics in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Discussion of the Issues:
  Comment 1: Duty Drawback Program
  Comment 2: Date of Sale
  Comment 3: Quality Characteristics
  Comment 4: Advertising Expenses
  Comment 5: Overall Cost Reconciliation
  Comment 6: Affiliated Raw Material Purchases
  Comment 7: General and Administrative Expenses
V. Recommendation

[FR Doc. 2016–17950 Filed 7–28–16; 8:45 am]

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[5] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[6] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[7] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[8] *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42501, 42503 (July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[9] *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71741, 71741–42 (Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–844]

Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From Brazil: Final Affirmative Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being

provided to producers and exporters of certain cold-rolled steel flat products (cold-rolled steel, or CRS) from Brazil. For information on the estimated subsidy rates, *see* the "Final Determination" section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin, Nicholas Czajkowski, or Lana Nigro, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6478, (202) 482–1395, and (202) 482–1779, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on December 22, 2015.[1] A summary of the events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version are identical in content.

Scope Comments

In accordance with the Preliminary Scope Determination,[3] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the records of the cold-rolled steel investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[4] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Scope of the Investigation

The products covered by this investigation are cold-rolled steel flat products from Brazil. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," attached to this notice at Appendix I.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Use of Adverse Facts Available

In making this final determination, the Department relied, in part, on facts available and, because the Government of Brazil and the respondent companies did not act to the best of their abilities in responding to the Department's requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.[5] Specifically, we applied facts available, with adverse inferences, for the Reduction of Tax on Industrialized Products for Machines and Equipment, the BNDES FINAME Loan program, and the Ex-Tarifário program, in accordance with section 776(a) and (b) of the Tariff Act of 1930, as amended, (the Act). For further information, *see* the section "Use of Adverse Facts Available" in the accompanying Final Decision Memorandum.

Changes Since the Preliminary Determination

Based on our analysis of the comments received from parties, and the minor corrections presented and additional items discovered at verification, we made certain changes to the respondents' subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for Usinas Siderurgicas de Minas Gerais S.A. (Usiminas) and Companhia Siderurgica Nacional (CSN), the exporters/producers of subject merchandise selected for individual examination in this investigation.

In accordance with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an "all others" rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as any rates based entirely on facts otherwise available, pursuant to section 776 of the Act. Neither of the respondents' rates was zero or *de minimis* or based entirely on facts otherwise available. Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we did not not calculate the "all-others" rate by weight averaging the rates of the two individually investigated respondents using their actual export sales data, because doing so risks disclosure of proprietary information. Instead, we calculated the all-others rate using the simple average of the respondents' calculated rates.[6] The estimated countervailable subsidy rates are as follows:

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[1] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From Brazil: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination Preliminary Determination,* 80 FR 79562 (December 22, 2015) (*Preliminary Determination*).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil," dated concurrently with this determination (Final Decision Memorandum) and hereby adopted by this notice.

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," dated February 29, 2016.

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: "Final Scope Comments Decision Memorandum," dated May 16, 2016.

[5] *See* sections 776(a) and (b) of the Act.

[6] *See* Memorandum to Dana S. Mermelstein, Program Manager, AD/CVD Operations, Office I, "Final Affirmative Countervailing Duty Determination: Cold-Rolled Steel Flat Products from Brazil; Calculation of the All Others Rate for the Final Determination in the Countervailing Duty Investigation of Cold-Rolled Steel Flat Products from Brazil" dated concurrently with this notice.

Company	Subsidy rate (percent)
Companhia Siderurgica Nacional (CSN)	11.31
Usinas Siderurgicas de Minas Gerais S.A. (Usiminas)	11.09
All Others	11.20

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of cold-rolled steel from Brazil, that were entered, or withdrawn from warehouse, for consumption on or after December 22, 2015, the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for countervailing duty (CVD) purposes for subject merchandise entered, or withdrawn from warehouse, on or after April 20, 2016, but to continue the suspension of liquidation of all entries from December 22, 2015 through April 19, 2016.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and will reinstate the suspension of liquidation under section 706(a) of the Act and will require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;[1]

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[1] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii)

- Tool steels;[2]
- Silico-manganese steel;[3]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.[4]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.[5]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

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VIII. Recommendation

[FR Doc. 2016–17952 Filed 7–28–16; 8:45 am]

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none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[2] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[3] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[4] *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[5] *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71,741, 71,741–42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–882]

Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Final Affirmative Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers/exporters of certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea) as provided in section 705 of the Tariff Act of 1930, as amended (the Act). For information on the subsidy rates, *see* the "Final Determination" section of this notice. The period of investigation is January 1, 2014, through December 31, 2014.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or Emily Maloof, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3813 or (202) 482–5649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the *Preliminary Determination* on December 22, 2015.[1] A summary of events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed Issues and Decision Memorandum and the electronic version are identical in content.

Scope of the Investigation

The products covered by this investigation are cold-rolled steel flat products from Korea. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[3] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the records of the cold-rolled steel investigations, and accompanying decision and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[4] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix I.

Use of Adverse Facts Available

In making this final determination, the Department relied, in part, on facts available and, because POSCO and Hyundai Steel Co., Ltd. (Hyundai Steel) did not act to the best of their ability in responding to the Department's requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.[5] Specifically, we find that the application of adverse facts available is warranted for POSCO for its failure to report certain cross-owned input suppliers and facilities located in a foreign economic zone (FEZ). We are also applying adverse facts available to POSCO's affiliated trading company, Daewoo International Corporation (DWI) for certain loans presented at verification. Further, we find that the application of adverse facts available is warranted for Hyundai Steel for its failure to report its location in an FEZ. For further information, *see* the section "Use of Facts Otherwise Available and Adverse Inferences" in the accompanying Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our analysis of the comments received from parties and the minor corrections presented, and additional items discovered at verification, we made certain changes to the respondents' subsidy rate calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for POSCO and Hyundai Steel, the two exporters/producers of subject merchandise selected for individual examination in this investigation.

In accordance with sections 705(c)(1)(B)(i)(I) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an "all-others" rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as respondents with those companies' export sales of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate should exclude zero and *de minimis* rates calculated for the exporters and producers individually investigated, and any rates determined entirely under section 776 of the Act. Therefore, we have excluded the rate calculated for POSCO because it was determined entirely under section 776 of the Act. Thus, for the "all-others" rate, we applied the rate calculated for Hyundai Steel.

Company	Subsidy rate (percent)
POSCO	58.36
Hyundai Steel Co., Ltd.	3.91
All-Others	3.91

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In the *Preliminary Determination,* the total net countervailable subsidy rates for the individually examined respondents were *de minimis* and, therefore, we did not suspend liquidation of entries of certain cold-rolled steel flat products from the Republic of Korea. However, the estimated subsidy rates for the examined companies are above *de minimis* in this final determination, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of cold-rolled steel from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of merchandise in the amounts indicated above. The suspension of liquidation will remain in effect until further notice. In addition, pursuant to section 705(c)(1)(B)(ii) of the Act, we are directing the CBP to require a cash deposit for such entries of merchandise in the amount indicated above.

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[1] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Negative Countervailing Duty Determination,* 80 FR 79567 (December 22, 2015) (*Preliminary Determination*).

[2] *See* Memorandum to Paul Piquado, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea," dated July 20, 2016 (Issues and Decision Memorandum).

[3] *See* Memorandum to Christian Marsh, "Certain Cold-Rolled Steel Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," dated February 29, 2016 (Preliminary Scope Determination).

[4] *See* Memorandum to Christian Marsh, "Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Final Scope Comments Decision Memorandum," dated May 16, 2016 (Final Scope Decision Memorandum).

[5] *See* sections 776(a) and (b) of the Act.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order and instruct CBP to require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary of Enforcement and Compliance.

Notification Regarding Administrative Protective Orders (APOs)

In the event the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

This determination and notice are issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Subsidies Valuation
V. Benchmarks and Discount Rates
VI. Use of Facts Otherwise Available And Adverse Inferences
VII. Analysis of Programs
VIII. Calculation of All-Others Rate
IX. Analysis of Comments
  Comment 1: Whether the Department Should Apply Adverse Facts Available (AFA) to the Provision of Electricity for Less Than Adequate Remuneration (LTAR)
  Comment 2: Whether the Department Should Find That the Provision of Electricity for LTAR is a Countervailable Subsidy
  Comment 3: Whether the Department Should Use Other submitted Data to Measure the Adequacy of Remuneration of Electricity
  Comment 4: Whether the Department Should Find the Provision of Natural Gas for LTAR Countervailable
  Comment 5: Application of AFA to POSCO and Treatment of POSCO's Unreported Affiliates
  Comment 6: Whether to Apply AFA to POSCO Global R&D Center
  Comment 7: Whether to Apply AFA to Certain Loans Submitted at Verification
  Comment 8: Whether to Apply AFA to Hyundai Steel for Use of Certain Foreign Economic Zones (FEZs)
  Comment 9: Whether Certain Loans at the Korean Export Import Bank (KEXIM) Were Verified
  Comment 10: The Department's Treatment of Unalleged Programs and Verification of Non-Use
  Comment 11: Whether to Apply AFA to the GOK for Restriction of Special Taxation Agreement (RSTA) Article 120
  Comment 12: Whether to Apply AFA to the GOK for DWI's Debt Workout
  Comment 13: Whether the Department Finds Tax Programs de facto Specific
  Comment 14: Whether the Department Should Determine That the Local Tax Exemption Hyundai Steel Received Under RSTA Article 120 Is Related to the Cold-Rolling Assets Purchased From Hyundai HYSCO and Is, Therefore, Attributable to Subject Merchandise
  Comment 15: Whether the Department Improperly Countervailed Property Tax Exemptions Received by the Pohang Plant Under RSLTA 78
X. Recommendation

Appendix II—Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances.[6] The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

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[6] Since the Preliminary Determination, eight interested parties (*i.e.*, JFE Steel Corporation, Electrolux Home Products, Inc., Electrolux Home Care Products, Inc., ArcelorMittal USA LLC, AK Steel Corporation, Nucor Corporation, Steel Dynamics Inc., and United States Steel Corporation) commented on the scope of the investigation. The Department reviewed these comments and made no changes. *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Final Scope Comments Decision," dated concurrently with this final determination.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;[7]
- Tool steels;[8]
- Silico-manganese steel;[9]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.[10]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.[11]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to this investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–17939 Filed 7–28–16; 8:45 am]

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[7] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[8] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[9] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[10] *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42,501, 42,503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[11] *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71,741, 71,741–42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–843]

Certain Cold-Rolled Steel Flat Products From Brazil: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that certain cold-rolled steel flat products (cold-rolled steel) from Brazil is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2014, through June 30, 2015. The final dumping margins of sales at LTFV are listed below in the "Final Determination" section of this notice.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2016, the Department published the *Preliminary Determination* of this antidumping duty (AD) investigation.[1] On April 7, 2016, we amended our *Preliminary Determination*.[2]

The following events occurred since the *Amended Preliminary Determination* was issued. In June 2016, U.S. Steel and Steel Dynamics, Inc.,[3] and CSN submitted case briefs[4] and rebuttal briefs.[5]

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[1] *See Certain Cold-Rolled Steel Flat Products From Brazil: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 81 FR 11754 (March 7, 2016) (*Preliminary Determination).*

[2] *See Certain Cold-Rolled Steel Flat Products From Brazil: Amended Preliminary Determination of Sales at Less Than Fair Value,* 81 FR 20366 (April 7, 2016) (*Amended Preliminary Determination*).

[3] The petitioners in this case are AK Steel Corporation (AK Steel), ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners).

[4] *See* Letter from U.S. Steel, "Certain Cold-Rolled Steel Flat Products From Brazil, Antidumping Investigation: Case Brief" (June 17, 2016); Letter from Steel Dynamics, Inc., "Certain Cold-Rolled Steel Flat Products From Brazil,: SDI's Case Brief" (June 17, 2016); Letter from CSN, "Certain Cold-Rolled Steel Flat Products from Brazil and Certain Hot-Rolled Steel Flat Products from Brazil: CSN's Case Brief" (June 17, 2016).

[5] *See* Letter from U.S. Steel, "Certain Cold-Rolled Steel Flat Products From Brazil, Antidumping

Scope of the Investigation

The products covered by this investigation are cold-rolled steel from Brazil. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[6] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of the cold-rolled steel investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[7] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice.[8] A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in April and May 2016, the Department verified the sales and cost data reported by Companhia Siderurgica Nacional (CSN), pursuant to section 782(i) of the Act. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by the respondent.[9]

Use of Adverse Facts Available

The Department found in the *Preliminary Determination* that Usiminas Siderurgicas de Minas Gerais S.A. (Usiminas) withheld requested information, significantly impeded the proceeding, and did not cooperate to the best of its ability in responding to the Department's requests for information.[10] Therefore, in accordance with sections 776(a)(2)(A) and (C) of the Act, 776(b) of the Act, and 19 CFR 351.308(a), the Department preliminarily determined the weighted-average dumping margin for Usiminas based on facts otherwise available with an adverse inference and preliminarily selected 35.43 percent as the adverse facts-available dumping margin for Usiminas, which is the highest margin alleged in the petition.[11] This rate was assigned to Usiminas because Usiminas failed to respond to sections B, C, and D of the Department's questionnaire in this investigation.[12]

The Department received no comments regarding its preliminary application of the adverse facts-available dumping margin to Usiminas. For the final determination, the Department has not altered its analysis or decision to apply the adverse facts-available dumping margin to Usiminas.

Changes Since the Preliminary Determination

Based on our findings at verification and our analysis of the comments received, we made certain changes to the margin calculations for CSN. For a discussion of these changes, *see* the "Margin Calculations" and "Comparisons to Fair Value" sections of the Issues and Decision Memorandum. We have also revised the all-others rate.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. For purposes of this final determination, we are assigning 14.43 percent as the "all-others" rate, which is based on the estimated dumping margin calculated for CSN, the only mandatory respondent for which we calculated a dumping margin.[13]

Final Determination

The Department determines that the final weighted-average dumping margins are as follows:

Exporter/ producer	Weighted-average dumping margin (percent)	Cash deposit rate (percent)
Companhia Siderurgica Nacional	14.43	10.34
Usiminas Siderurgicas de Minas Gerais S.A. (Usiminas)	35.43	31.66
All-Others	14.43	10.34

Disclosure

We intend to disclose the calculations performed to interested parties within five days of the public announcement of this final determination in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department

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Investigation: Rebuttal Brief" (June 22, 2016); Letter from CSN, "Certain Cold-Rolled Steel Flat Products from Brazil: CSN's Rebuttal Brief" (June 22, 2016).

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations" dated February 29, 2016 (Preliminary Scope Decision Memorandum).

[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations" dated concurrently with this notice.

[8] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil" (July 20, 2016) (Issues and Decision Memorandum).

[9] *See* Memoranda to the File: "Certain Cold-Rolled Steel Flat Products from Brazil: Sales Verification Report for Companhia Siderugica Nacional," dated May 20, 2016; "Certain Cold-Rolled Steel Flat Products from Brazil: Sales Verification Report for Companhia Siderugica Nacional LLC USA," dated June 2, 2016; "Verification of the Further Manufacturing Response of Companhia Siderurgica Nacional S.A. in the Antidumping Duty Investigation of Cold-Rolled Steel Flat Products from Brazil," dated June 3, 2016; and, "Verification of the Cost of Production Response of Companhia Siderugica Nacional S.A. in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil," dated June 8, 2016.

[10] *See Preliminary Determination.*

[11] *See Amended Preliminary Determination. See* also, Memorandum to the File entitled, "Corroboration of a Rate Based on Adverse Facts Available," dated April 1, 2016.

[12] *Id.*

[13] *See* Memorandum to the File, "Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Calculation of All-Others Rate" (All-Others Rate Memorandum), dated July 20, 2016.

will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of cold-rolled steel from Brazil, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after March 7, 2016, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**.

Further, the Department will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as shown above, adjusted where appropriate for export subsidies found in the final determination of the companion countervailing duty investigation. Consistent with our longstanding practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit equal to the amount by which the NV exceeds the U.S. price, less the amount of the countervailing duty determined to constitute any export subsidies.[14] Therefore, in the event that a countervailing duty order is issued and suspension of liquidation is resumed in the companion countervailing duty investigation on cold-rolled steel flat products from Brazil the Department will instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above.[15] Until such suspension of liquidation is resumed in the companion countervailing duty investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping duty investigation will be the rates identified in the weighted-average margin column in the rate chart, above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of cold-rolled steel from Brazil no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an *Administrative Protective Order* (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: July 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been "worked after rolling" (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

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[14] *See, e.g., Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value,* 80 FR 61362 (October 13, 2015) and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea,* 77 FR 17413 (March 26, 2012).

[15] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products From Brazil: Final Affirmative,* dated July 20, 2016; *see* also the All-Others Rate Memorandum dated concurrently with this notice.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;[16]
- Tool steels;[17]
- Silico-manganese steel;[18]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.[19]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.[20]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

Appendix II—List of Topics Discussed in the Issues and Decision Memorandum

1. Summary
2. Background
3. Period of Investigation
4. Margin Calculations
5. Comparisons to Fair Value
6. List of Comments
7. Discussion of Comments
   Comment 1: Duty Drawback
   Comment 2: Affiliated Party Sales
   Comment 3: Inventory Carrying Costs
   Comment 4: Credit Revenue
   Comment 5: Model Match
   Comment 6: Whether to Exclude Work-In-Process Quantities from CSN LLC's Per-Unit Cost Calculations
   Comment 7: Calculation of CSN LLC's G&A Expense Ratio
   Comment 8: Whether to Use a Consolidated or Non-Consolidated Financial Expense Ratio
   Comment 9: Financial Expense Ratio to be applied to Further Manufacturing Costs
   Comment 10: The Market Value for Affiliated Energy Inputs
   Comment 11: The Market Value for Affiliated Rail Freight Inputs
   Comment 12: The Market Value for Affiliated Port Management Services
   Comment 13: Whether to Include Certain Expenses Recorded Directly to Cost of Goods Sold (COGS)
   Comment 14: Calculation of CSN's G&A Expense Ratio
8. Recommendation

[FR Doc. 2016–17951 Filed 7–28–16; 8:45 am]

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[16] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[17] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[18] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[19] *See Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 Fed. Reg. 42501, 42503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[20] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71741, 71741–42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

DEPARTMENT OF COMMERCE

International Trade Administration

University of Pittsburgh, et al.; Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC.

Docket Number: 15–044. Applicant: University of Pittsburgh, Pittsburgh, PA 15260. Instrument: Scios Dual Beam Field Emission Scanning Electron Microscope. Manufacturer: Scios, Czech Republic. Intended Use: See notice at 81 FR 11517, March 4, 2016. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to reveal the surface and sub-surface microstructure metrics of structural materials such as steels, Ni-based superalloys, Al-, Ti-, Mn-base and other specialty alloys, functional materials based on ceramic, metal and semiconducting thin films, particulates and composites.

Docket Number: 15–049. Applicant: University of Maryland College Park, College Park, MD 20742. Instrument: Laser lithography system Photonic Professional GT and accessories. Manufacturer: Nanoscribe GmbH, Hermon Von Hermholtz Platz 1, Germany. Intended Use: See notice at 81 FR 11517, March 4, 2016. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The fundamental capabilities of the instrument target the nanoscale fabrication of complex 3-dimensional polymer components and systems. The instrument will be used for the characterization and optimization of fabrication resolution and precision for specific applications and device and system level characterization of components manufactured using the nanoscribe tool. It will be used to perform research into the nanoscale patterning of photoactive polymer materials, including epoxy-based photoresists. Unique features of this instrument include two photon polymerization of various UV-curable photoresists, two photon exposure of common positive tone photoresists, and the highest resolution available for a 3D printer.

Docket Number: 15–055. Applicant: Rutgers University, Piscataway, NJ 08854. Instrument: Opitcal Floating Zone Furnace. Manufacturer: Crystal Systems Cooperation, Japan. Intended Use: See notice at 81 FR 32724, May 24, 2016. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to grow high quality bulk single crystals of a variety of complex quantum materials including multiferroics, ferroelectrics and low-symmetry magnets. Research projects will include the duality between FR and PUA states in hexagonal manganites, the duality between Ising triangular antiferromagnetism and improper ferroelectricity in hexagonal systems, the domains and domain walls in other polar or chiral magnets, the domains and domain walls in new hybrid improper ferroelectrics, the domains and domain walls in metastable phases at the phase boundaries, and magnetic skyrmion in non-centrosymmetric magnets. The instrument is equipped with 5 high power (1000 W in total) continuous wavelength laser diodes as a heating source. Five lasers ensure temperature homogeneity along the azimuthal direction around the crystal rod to be greater than 95%. The maximum temperature gradient along the growth direction is greater than 150 degrees Celsius/mm. Crystal growth can go from extremely stable and slow growth to very rapid quenching mode, 0.01 to 300 mm/h. This enables the growth of incongruently melting and highly evaporating materials.

Docket Number: 15–058. Applicant: UChicago Argonne, Lemont, IL 60439–4873. Instrument: IEX ARPES Cryo-Manipulator. Manufacturer: Omnivac, Hansjoerg Ruppender, Germany. Intended Use: See notice at 81 FR 32724–25, May 24, 2016. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of order. Reasons: The instrument will be used to cool and position single crystal and thin film samples in an angle-resolved photoemission spectroscopy (ARPES) chamber. ARPES is used to map the electronic band structure of material. Samples include high-temperature superconductors, graphene, and other low dimensional materials, metals and complex oxides. The instrument's unique features include ultra-high vacuum compatible, six-axes of motion with a specified range x: +/−10mm, 1μm, +/−0.05μm, y: +/−10mm, 1μm, +/−0.05μm, z: 300mm, 1μm, +/−0.05μm, polar rotation: 360 degrees, 0.005 degrees, 0.0001 degrees, flip rotation: −15/+60 degrees, .1 degree, 0.05 degrees, azimuthal rotation: +/−90 degrees, .1 degree, 0.05 degrees, a low base temperature of 5.5K and high vibrational stability (motion at the sample <500 nm).

Dated: July 22, 2016.

Gregory W. Campbell,

Director, Subsidies Enforcement Office, Enforcement and Compliance.

[FR Doc. 2016–18016 Filed 7–28–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–822]

Certain Cold-Rolled Steel Flat Products From the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") determines that cold-rolled steel flat products ("cold-rolled steel") from the Russian Federation ("Russia") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"). The period of investigation ("POI") is July 31, 2014, through June 30, 2015. The final dumping margins of sales at LTFV are listed below in the "Final Determination" section of this notice.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Eve Wang or Alex Rosen, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243, (202) 482–6231 or (202) 482–7814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2016, the Department published the *Preliminary Determination* of this antidumping duty ("AD") investigation and invited parties to comment.[1] As provided in section 782(i) of the Act, in April and May 2016, the Department verified the sales and cost data reported by Severstal Export GmbH and PAO Severstal (collectively "Severstal") and Novex Trading (Swiss) SA and Novolipetsk Steel OJSC (collectively "NLMK"), the two mandatory respondents in this investigation. In June 2016, ArcelorMittal USA LLC ("ArcelorMittal"), on behalf of Petitioners,[2] Severstal, and NLMK submitted case briefs and rebuttal briefs. For a complete discussion of the events that occurred since the *Preliminary Determination, see* the Issues and Decision Memorandum.[3]

Scope of the Investigation

The products covered by this investigation are cold-rolled steel from the Russian Federation. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Attachment II of this notice.

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[1] *See Certain Cold-Rolled Steel Flat Products from the Russian Federation: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination,* 81 FR 12072 (March 8, 2016) ("*Preliminary Determination*").

[2] Petitioners are AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation.

[3] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation," dated concurrently with this notice ("Issues and Decision Memorandum").

Scope Comments

In accordance with the Preliminary Scope Decision Memorandum,[4] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the record of the cold-rolled steel investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[5] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum, which is incorporated by reference and hereby adopted by this notice. A list of the issues raised is attached to this notice as Attachment I. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations. For a discussion of these changes, *see* the Issues and Decision Memorandum. We have also revised the all-others rate.

All-Others Rate

Section 735(c)(5)(A) of the Tariff Act of 1930, as amended ("the Act") provides that the estimated all-others rate shall be an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins, and margins determined entirely under section 776 of the Act. In this case, because the final dumping margin calculated for NLMK is *de minimis,* we assigned the rate calculated for Severstal as the "all-others" rate in the final determination, in accordance with section 735(c)(5)(A) of the Act.

Final Determination

The Department determines that the final weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (percent)
Severstal Export GmbH and PAO Severstal.	13.36.
Novex Trading (Swiss) SA and Novolipetsk Steel OJSC.	1.04 (*de minimis*).
All Others	13.36.

Disclosure

We intend to disclose the calculations performed within five days of the publication of this notice to interested parties, in accordance with 19 CFR 351.224(b).

Final Affirmative Determination of Critical Circumstances, In Part

On February 29, 2016 the Department found that critical circumstances existed for merchandise exported by Severstal and NLMK, as well as for "all others."[6] Based on the final sales data submitted by Severstal and NLMK and further analysis following the *Preliminary Determination,* we are modifying our findings for the final determination, in part. For the final determination, with respect to NLMK, we have determined that cold-rolled steel is not being, or is not likely to be, sold in the United States at LTFV and, thus, we are issuing a negative critical circumstances determination. With respect to Severstal, our analysis of Severstal revised reported monthly data demonstrates that Severstal's shipments of cold-rolled steel during the comparison period increased less than 15 percent over the respective imports in the base period, and thus, we are issuing a negative critical circumstances determination. For all others, we relied on NLMK's reported shipment data and Severstal's revised shipment data and determined that the imports during the comparison period increased more than 15 percent over the respective imports under the same methodology as in the *Preliminary Determination.* Accordingly, we determine that critical circumstances did not exist with regard to NLMK's or Sevestal's imports of cold-rolled steel, but existed with regard to all others. For a complete discussion of this issue, *see* the "Final Determination of Critical Circumstances, In Part" section of the Issues and Decision Memorandum.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all appropriate entries of cold-rolled steel from Russia as described in the "Scope of the Investigation" section, which are entered, or withdrawn from warehouse, for consumption on or after March 8, 2016, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.* Because of our affirmative determination of critical circumstances for "all others," in accordance with section 735(a)(3) and (c)(4)(C) of the Act, suspension of liquidation of cold-rolled steel from Russia, as described in the "Scope of the Investigation" section, shall apply, for "all others," to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of the *Preliminary Determination.* Because we find in this final determination that critical circumstances do not exist for Severstal, we will terminate the retroactive suspension of liquidation ordered at the *Preliminary Determination* and release any cash deposits that were required during that period, consistent with section 735(c)(3) of the Act. For NLMK, which includes Novex Trading (Swiss) SA and Novolipetsk Steel OJSC, because this entity's estimated weighted-average final dumping margin is *de minimis,* we are directing CBP to terminate suspension of liquidation of entries of cold-rolled steel produced and exported by this entity.

Further, pursuant to 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price as follows: (1) For the mandatory respondent listed above, the cash deposit rate will be equal to the dumping margin which the Department determined in this final determination adjusted, as appropriate, for export subsidies found in the final determination of the companion countervailing duty investigation;[7] (2) if the exporter is not a firm identified in this investigation, but the producer is, the cash deposit rate will be the rate established for the producer of the subject merchandise; and (3) the cash deposit rates for all other producers or exporters will be 13.36 percent, as discussed in the "All-Others Rate" section above. The suspension of liquidation instructions will remain in effect until further notice.

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[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," dated February 29, 2016 ("Preliminary Scope Decision Memorandum").

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice ("Final Scope Decision Memorandum").

[6] *See Preliminary Determination.*

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission ("ITC") of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain cold-rolled steel from Russia no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders ("APO")

This notice serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: July 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Attachment I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Final Determination of Critical Circumstances, In Part
V. Changes Since the Preliminary Determination
VI. List of Comments
VII. Discussion of the Issues
  Comment 1: Application of Adverse Facts Available ("AFA") for Severstal
  Comment 2: Classification of Severstal Export's Sales through SSE Miami
  Comment 3: Treatment of SSE Miami's Indirect Selling Expenses in the Determination of U.S. Price
  Comment 4: The Use of Zeroing in Severstal's Margin Analysis
  Comment 5: Calculation of Severstal Export's U.S. Customs Clearance Costs
  Comment 6: Financial Expenses and Foreign Exchange Losses for Severstal
  Comment 7: Missing Costs for Severstal
  Comment 8: Cost for Products Sold but not Produced During the POI for Severstal
  Comment 9: Major Inputs for Severstal
  Comment 10: Financial Expense Ratio Calculation for Severstal
  Comment 11: Ministerial Errors for Severstal
  Comment 12: NLMK's Date of Sale for the U.S. Sales
  Comment 13: Reserve for Doubtful Debts in NLMK's Indirect Selling Expenses
  Comment 14: NLMK's Other Income and Expense Items
  Comment 15: Allocation of the Parent Company's Expenses to NLMK
  Comment 16: NLMK's Net Financial Expense Ratio
  Comment 17: Minor Corrections in NLMK's Margin Calculation
VIII. Recommendation

Attachment II

Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been "worked after rolling" (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, motor lamination steels, Advanced High Strength Steels ("AHSS"), and Ultra High Strength Steels ("UHSS"). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

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[7] In this case, although the product under investigation is also subject to a countervailing duty investigation, the Department found no countervailing duty determined to constitute an export subsidy. Therefore, we did not offset the cash deposit rates shown above for purposes of this determination.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;[8]
- Tool steels;[9]
- Silico-manganese steel;[10]
- Grain-oriented electrical steels ("GOES") as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel from Germany, Japan, and Poland*.[11]
- Non-Oriented Electrical Steels ("NOES"), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.[12]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–17938 Filed 7–28–16; 8:45 am]

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[8] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[9] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[10] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[11] *Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42,501, 42,503 (Dep't of Commerce, July 22, 2014) ("*Grain-Oriented Electrical Steel from Germany, Japan, and Poland*"). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[12] *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71,741, 71,741–42 (Dep't of Commerce, Dec. 3, 2014) ("*Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*"). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–881]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") determines that certain cold-rolled steel flat products ("cold-rolled steel") from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value ("LTFV"). The final estimated weighted-average dumping margins are listed below in the "Final Determination" section of this notice. The period of investigation ("POI") is July 1, 2014, through June 30, 2015.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5075 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the preliminary determination on March 7, 2016.[1] A summary of the events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Final Issues and Decision Memorandum.[2]

Also, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised

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[1] *See Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 11757 (March 7, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for the Final Affirmative Determination in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Products from the Republic of Korea," (Final Issues and Decision Memorandum), dated concurrently with this determination and hereby adopted by this notice.

its authority to toll all administrative deadlines due to the recent closure of the Federal Government.[3] As a consequence, all deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now July 20, 2016.

Scope of the Investigation

The product covered by this investigation is cold-rolled steel from the Republic of Korea. For a complete description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix II of this notice.

Scope Comments

In accordance with the Preliminary Scope Determination,[4] the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.

For a summary of the product coverage comments and rebuttal responses submitted to the records of the cold-rolled steel investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum.[5] The Final Scope Decision Memorandum is incorporated by, and hereby adopted by, this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Final Issues and Decision Memorandum, which is hereby adopted by this notice.[6] A list of the issues raised is attached to this notice as Appendix I. The Final Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Final Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Final Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Act, in January, March, and April 2016, the Department verified the sales and cost data reported by the mandatory respondents Hyundai Steel Company and POSCO,[7] pursuant to section 782(i) of the Act. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by respondents.

Use of Adverse Facts Available

In making this final determination, the Department relied, in part, on facts available and, because Hyundai Steel Company did not act to the best of its ability in responding to the Department's requests for information, we drew an adverse inference where appropriate in selecting from among the facts otherwise available.[8] For further information, *see* the accompanying Final Issues and Decision Memorandum.

Changes to the Margin Calculations Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for Hyundai Steel Company and POSCO. For a discussion of these changes, *see* the Final Issues and Decision Memorandum. We have also revised the all-others rate.

All-Others Rate

Consistent with sections 735(c)(1)(B)(i)(II) and 735(c)(5) of the Act, the Department also calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. Where the rates for investigated companies are zero or *de minimis,* or based entirely on facts otherwise available, section 735(c)(5)(B) of the Act instructs the Department to establish an "all others" rate using "any reasonable method."

In this investigation, we calculated weighted-average dumping margins for Hyundai Steel Company and POSCO, that are above *de minimis* and which are not based entirely on total facts available. We calculated the all-others rate using a simple average of the dumping margins calculated for the mandatory respondents.[9]

Final Determination Margins

The Department determines that the following estimated weighted-average dumping margins exist:

Exporter/manufacturer	Weighted-average dumping margins (percent)	Cash deposit rate (percent)
Hyundai Steel Company	34.33	34.33
POSCO and Daewoo International Corporation	6.32	0.00
All Others	20.33	20.33

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[3] *See* Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cold-Rolled Steel Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations," dated February 29, 2016 ("Preliminary Scope Decision Memorandum").

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Final Scope Comments Decision Memorandum," dated May 16, 2016 (Final Scope Decision Memorandum).

[6] *See* Final Issues and Decision Memorandum.

[7] We are continuing to collapse the mandatory respondent Daewoo International Corporation (DWI) and POSCO, and henceforward refer to the collapsed entity as "POSCO". *See Preliminary Determination,* 81 FR at 11758.

[8] *See* sections 776(a) and (b) of the Act.

[9] With two respondents, we would normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We would compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data was unavailable, we based the all-others rate on a simple average of the two calculated margins.

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of cold-rolled steel from Korea, which were entered, or withdrawn from warehouse, for consumption on or after March 7, 2016 (the date of publication of the affirmative *Preliminary Determination*).

Where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit less the amount of the countervailing duty determined to constitute any export subsidies. Because of the affirmative final determination in the countervailing duty investigation, suspension of liquidation will be ordered in that investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping duty investigation will be the rates identified in the cash deposit rate column in the rate chart, above. In the event that a countervailing duty order is issued and suspension of liquidation continues in the companion countervailing duty investigation on cold-rolled steel from the Korea, the Department will continue to instruct CBP to require cash deposits adjusted by the amount of export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the ITC of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of cold-rolled steel from Korea no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders (“APOs”)

This notice serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: July 20, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Final Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Changes Since the Preliminary Determination
VI. Discussion of the Issues

General Comments

1. Differential Pricing

Company-Specific Comments

POSCO

2. International Freight and Domestic Brokerage and Handling Expenses
3. Loading and Foreign Inland Freight Expenses
4. Quality Product Characteristic
5. Yield Loss
6. General and Administrative Expenses
7. Home Market Gross Unit Price Field
8. Inclusion of Warehousing Expense in Freight Revenue Cap Calculations
9. CEP Offset
10. Affiliated Party Purchases Cost Adjustment

Hyundai Steel

11. Whether or not to apply total adverse facts available to Hyundai Steel
12. Control Numbers and Prime/Non-Prime Designation
13. U.S. Sales and Further Manufacturing Costs
14. Repacking Cost for Further Manufactured Merchandise
15. Reporting of Inland Freight, Warehousing Services, International Freight, and Other Services Provided by an Affiliated Company
16. 2013 Financial Statements
17. Certain Home Market Customers
18. CEP Offset
19. Other Issues
20. Other Cost Issues

VII. Recommendation

Appendix II

Scope of the Investigation

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (“width”) of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or

- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Ball bearing steels;[10]
- Tool steels;[11]
- Silico-manganese steel;[12]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.[13]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.[14]

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the investigation is dispositive.

[FR Doc. 2016–17941 Filed 7–28–16; 8:45 am]

BILLING CODE 3510–DS–P

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[10] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

[11] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[12] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[13] *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42501, 42503 (Dep't of Commerce, July 22, 2014). This determination defines grain-oriented electrical steel as "a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths."

[14] *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71741, 71741–42 (Dep't of Commerce, Dec. 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA444

Marine Mammals; File No. 14245

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that the NMFS National Marine Mammal Laboratory, Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA 98115–6349, (Dr. John Bengtson, Responsible Party), has been issued a minor amendment to Scientific Research Permit No. 14245–03.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*); the regulations governing the taking and importing of marine mammals (50 CFR part 216); the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The original permit (No. 14245), issued on April 25, 2011 (76 FR 30309) authorized the holder to conduct research in the Pacific, Atlantic, and Arctic Oceans on 33 species of cetaceans, including vessel and aerial surveys for remote observation and monitoring, marking, biological sampling, and/or tagging, and captures for two species with subsequent sampling and tagging activities through May 1, 2016. The minor amendment (No. 14245–04) extends the duration of the permit through May 1, 2017, but does not change any other terms or conditions of the permit.

Dated: July 25, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–17919 Filed 7–28–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE699

Endangered and Threatened Species; Initiation of 5-Year Review for North Atlantic Right Whale

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of initiation of 5-year review; request for information.

SUMMARY: NMFS announces a 5-year review of the North Atlantic right whale (*Eubalaena glacialis*) under the Endangered Species Act of 1973, as amended (ESA). The purpose of these reviews is to ensure that the listing classification of a species is accurate. The 5-year review will be based on the best scientific and commercial data available at the time of the review; therefore, we request submission of any such information on the North Atlantic right whale that has become available since the last 5-year review in 2012. Based on the results of this 5-year review, we will make the requisite determination under the ESA.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than October 27, 2016. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: You may submit information on this document identified by NOAA–NMFS–2016–0092 by either of the following methods:

- Electronic submission: Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the Federal e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA–NMFS–2016–0092 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.
- Mail or hand-delivery: Therese Conant, NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD. 20910.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Michael J. Asaro, NMFS Protected Resources Division, Greater Atlantic Region, 978–282–8469.

SUPPLEMENTARY INFORMATION: Under the ESA, the U.S. Fish and Wildlife Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals and 17.12 (for plants). Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. On the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be delisted or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the North Atlantic right whale currently listed as endangered.

Background information on the North Atlantic right whale is available on the NMFS Office of Protected Species Web site at: *http://www.fisheries.noaa.gov/pr/species/mammals/whales/north-atlantic-right-whale.html.*

Determining if a Species is Threatened or Endangered

Section 4(a)(1) of the ESA requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Section 4(b) also requires that our determination be made on the basis of the best scientific and commercial data available after taking into account those efforts, if any, being made by any State or foreign nation, to protect such species.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the North Atlantic right whale. The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include: (1) Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important features for conservation; (3) status and trends of threats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; (5) need for additional conservation measures; and (6) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the list of endangered and threatened species, and improved analytical methods for evaluating extinction risk.

If you wish to provide information for this 5-year review, you may submit your information and materials electronically or via mail (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. We also would appreciate the submitter's name, address, and any association, institution, or business that the person represents; however, anonymous submissions will also be accepted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 26, 2016.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–18004 Filed 7–28–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE765

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its *Herring* Committee on Tuesday, August 16, 2016, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, August 16, 2016, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will give a brief update on the next steps for Management Strategy Evaluation of Atlantic *Herring* Acceptable Biological Catch control rules being considered in Amendment 8 to the Atlantic *Herring* Fishery Management Plan (FMP). The committee will also review preliminary PDT analysis and develop measures related to localized depletion to be considered in Amendment 8 to the Atlantic *Herring* FMP. The Committee will review progress and provide input on Framework Adjustment 5 to the Atlantic *Herring* FMP, an action considering modification of accountability measures (AMs) that trigger if the sub-ACL of Georges Bank *Haddock* is exceeded by the midwater trawl *Herring* fishery. Additionally, they will start initial discussions of work priorities for the *Herring* FMP in 2017. Other business may be discussed as necessary.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17969 Filed 7–28–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE764

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its *Herring* Advisory Panel on Wednesday, August 17, 2016, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, August 17, 2016 at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048: (508) 339–2200; fax: (508) 339–1040.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will give a brief update on the next steps for Management Strategy Evaluation of Atlantic *Herring* Acceptable Biological Catch control rules being considered in Amendment 8 to the Atlantic *Herring* Fishery Management Plan (FMP). The Advisory Panel will also review preliminary PDT analysis and develop measures related to localized depletion to be considered in Amendment 8 to the Atlantic *Herring* FMP. The advisory panel will review progress and provide input on Framework Adjustment 5 to the Atlantic *Herring* FMP, an action considering modification of accountability measures (AMs) that trigger if the sub-ACL of Georges Bank *Haddock* is exceeded by the midwater trawl *Herring* fishery. Additionally, they will also start initial discussions of work priorities for the *Herring* FMP in 2017. Other business may be discussed as necessary.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 26, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–17970 Filed 7–28–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Technical Information Service

[Docket No.: 160726001–5001–02]

Opportunity To Enter Into a Joint Venture With the National Technical Information Service for Data Innovation Support; Extension of Proposal Submission Period

AGENCY: National Technical Information Service, Department of Commerce.

ACTION: Notice; extension of proposal submission period.

SUMMARY: The National Technical Information Service (NTIS) is extending the period during which it will accept proposals from organizations interested in entering into a Joint Venture Partnership with NTIS to assist Federal agencies to develop and implement innovative ways to collect, connect, access, analyze, or use Federal data and data services.

DATES: Proposals are due on or before 11:59 p.m. Eastern Time on Tuesday, August 9, 2016. Proposals received after 11:59 p.m. Eastern Time on August 1, 2016 and before publication of this notice are deemed timely.

ADDRESSES: Proposers must submit their written submissions electronically with the subject line "Opportunity to Enter into a Joint Venture Partnership with the National Technical Information Service for Data Innovation Support" via email to *OpportunityAnnouncement@ntis.gov* with an email copy to Kenyetta Haywood at *khaywood@ntis.gov.*

FOR FURTHER INFORMATION CONTACT: Don Hagen at 703–605–6142, or by email at *dhagen@ntis.gov.*

SUPPLEMENTARY INFORMATION: On Wednesday, June 15, 2016, NTIS published a notice in the **Federal Register** (81 FR 39025), requesting proposals from interested for-profit, non-profit, or research performing organizations to enter into a Joint Venture Partnership with NTIS to assist Federal agencies to develop and implement innovative ways to collect, connect, access, analyze, or use Federal data and data services. An informational session and webinar about the opportunity were held on Thursday, July 7, 2016. The session was recorded and is posted on the NTIS Web site at *www.ntis.gov.* Due to the many questions received from interested parties and requests for additional time to prepare proposals, NTIS is extending the proposal submission period to 11:59 p.m. Eastern Time on Tuesday, August 9, 2016. Proposers who submitted proposals by the August 1, 2016 deadline but who want to use the additional preparation time may withdraw the proposal they submitted and submit a complete, revised proposal by the August 9, 2016 deadline.

Dated: July 26, 2016.

Gregory Capella,

Deputy Director, National Technical Information Service.

[FR Doc. 2016–18034 Filed 7–28–16; 8:45 am]

BILLING CODE 3510–04–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement list.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* August 28, 2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/20/2016 (81 FR 31917–31918) and 6/24/2106 (81 FR 41297–41298), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products:

NSN(s)—Product Name(s):

8520–00–NIB–0134—Purell Instant Hand Sanitizer, Green-Certified, 8 oz. Bottle
8520–00–NIB–0135—Purell Instant Hand Sanitizer, Green-Certified, 12 oz. Bottle
8520–00–NIB–0141—Purell Instant Hand Sanitizer, Alcohol-Free, Foam, 535 ml Pump Bottle
8520–00–NIB–0142—Purell Instant Hand Sanitizer, Alcohol-Free, Foam, 45 ml Pump Bottle
8520–00–NIB–0143—Purell Instant Hand Sanitizer, Alcohol-Free, Foam, 1200 ml LTX Cartridge Refill
8520–00–NIB–0144—Purell Instant Hand Sanitizer, Alcohol-Free, Foam, 1200 ml ADX Cartridge Refill
Mandatory for: Department of Homeland Security
Mandatory Source(s) of Supply: Travis Association for the Blind, Austin, TX
Contracting Activity: Department of Homeland Security, Office of Procurement Operations, Washington, DC
Distribution: C-List
NSN(s)-Product Name(s): MR 10731—Garden Colander, Includes Shipper 20731
Mandatory for: The requirements of military commissaries and exchanges in accordance with the Code of Federal Regulations, Chapter 51, 51–6.4
Mandatory Source(s) of Supply: Winston-Salem Industries for the Blind, Inc., Wilson-Salem, NC
Contracting Activity: Defense Commissary Agency
Distribution: C-List

Service:

Service Type: Administrative and Contact Center Service
Mandatory for: US Air Force, Total Force Service Center-San Antonio (TFSC–SA), Air Force Personnel Center, Joint Base San Antonio (JBSA) Randolph, JBSA Randolph, TX
Mandatory Source(s) of Supply: Goodwill Industries of San Antonio Contract Services, San Antonio, TX (Goodwill)
Contracting Activity: Dept. of the Air Force, FA3002 338 SCONS CC, Randolph AFB, TX
Service Type: Janitorial Service
Mandatory for: US Forest Service, Northern California Service Center, 6101 Airport Road, Redding, CA
Mandatory Source(s) of Supply: Shasta County Opportunity Center, Redding, CA
Contracting Activity: Forest Service, Pacific Southwest Region, San Francisco, CA

Deletions

On 6/24/2106 (81 FR 41297), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

NSN(s)—Product Name(s):

8415–01–579–9752—Multi-Cam Coat
8415–01–579–9622—Multi-Cam Coat
8415–01–579–9621—Multi-Cam Coat
8415–01–579–9747—Multi-Cam Coat
8415–01–579–9749—Multi-Cam Coat
8415–01–579–9745—Multi-Cam Coat
8415–01–579–9753—Multi-Cam Coat
8415–01–579–9756—Multi-Cam Coat
8415–01–579–9759—Multi-Cam Coat
8415–01–579–9762—Multi-Cam Coat
8415–01–579–9616—Multi-Cam Coat
8415–01–579–9773—Multi-Cam Coat
8415–01–579–9776—Multi-Cam Coat
8415–01–579–9781—Multi-Cam Coat
8415–01–580–0068—Multi-Cam Coat
8415–01–580–0075—Multi-Cam Coat
8415–01–579–9850—Multi-Cam Coat
8415–01–580–0077—Multi-Cam Coat
8415–01–579–9852—Multi-Cam Coat
8415–01–579–9864—Multi-Cam Coat
8415–01–579–9840—Multi-Cam Coat
8415–01–579–9843—Multi-Cam Coat
8415–01–579–9847—Multi-Cam Coat
8415–01–579–9827—Multi-Cam Coat
8415–01–579–9830—Multi-Cam Coat
8415–01–579–9833—Multi-Cam Coat
8415–01–579–9836—Multi-Cam Coat
8415–01–579–9801—Multi-Cam Coat
8415–01–579–9806—Multi-Cam Coat
8415–01–579–9811—Multi-Cam Coat
8415–01–579–9814—Multi-Cam Coat
8415–01–579–9782—Multi-Cam Coat
8415–01–579–9784—Multi-Cam Coat
8415–01–579–9823—Multi-Cam Coat
8415–01–579–9789—Multi-Cam Coat
8415–01–579–9794—Multi-Cam Coat
8415–01–579–9795—Multi-Cam Coat

Mandatory Source(s) of Supply: STEPS, Inc., Farmville, VA, ReadyOne Industries, Inc., El Paso, TX

Contracting Activity: Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division

NSN(s)—Product Name(s):

8920–01–E62–3504—Cake Mix, Gingerbread; 6–4 lb cans
8920–01–E62–3503—Cake Mix, Gingerbread; 6–5 lb boxes

Mandatory Source(s) of Supply: Transylvania Vocational Services, Inc., Brevard, NC

Contracting Activity: Defense Logistics Agency Troop Support

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–17990 Filed 7–28–16; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and a service previously provided by such agencies.

DATES: Comments must be received on or before August 28, 2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agency listed:

Products

NSN(s)—Product Name(s): MR 13001—Greensaver Produce Keeper, 1.6 Qt. MR 13002—Greensaver Produce Keeper, 4.3 Qt. MR 13004—Greensaver Crisper Insert.

Mandatory Source(s) of Supply: Cincinnati Association for the Blind, Cincinnati, OH.

Mandatory Purchase For: The requirements of military commissaries and exchanges in accordance with the Code of Federal Regulations, Chapter 51, 51–6.4.

Contracting Activity: Defense Commissary Agency.

Distribution: C-List.

Deletions

The following products and service are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): MR 890—Barbecue, Display, 4 Tool.

Mandatory Source(s) of Supply: Cincinnati Association for the Blind, Cincinnati, OH.

Contracting Activity: Defense Commissary Agency.

NSN(s)—Product Name(s): MR 1032—Rag, Cleaning, White, MR 1145—Server, Gravy Boat.

Mandatory Source(s) of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC.

Contracting Activity: Defense Commissary Agency.

NSN(s)—Product Name(s): 6230–00–643–3562—Lantern, Electric, Head 6230–01–493–7630—Lighting Pro VR–5AA Headlight.

Contracting Activity: General Services Administration, Fort Worth, TX.

NSN(s)—Product Name(s) 6230–01–285–4396—Lantern, Electric, Fireman's Helmet.

Contracting Activity: Defense Logistics Agency Aviation.

Mandatory Source(s) of Supply: Easter Seals Capital Region & Eastern Connecticut, Inc., Windsor, CT.

Service

Service Type: Janitorial/Custodial Service.

Mandatory for: Veterans Center #402: 4161 Cass, Detroit, MI.

Mandatory Source(s) of Supply: Jewish Vocational Service and Community Workshop, Southfield, MI.

Contracting Activity: Department of Veterans Affairs.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–17989 Filed 7–28–16; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, August 5, 2016.

PLACE: Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor, Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Natise Allen,

Executive Assistant.

[FR Doc. 2016–18134 Filed 7–27–16; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2016–HQ–0005]

Proposed Collection; Comment Request

AGENCY: Air Force Equal Opportunity (AF/EO) Program, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 27, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Air Force Equal Opportunity Office (AF/EO), ATTN: Mr. James H. Carlock Jr., 1500 West Perimeter Road, Suite 4500, Joint Base Andrews Air Force Base, Maryland 20762, or call at 240–612–4113.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: AF EO IT Systems—Entellitrack and iComplaints; AF FORM 1271, Equal Opportunity Record of Assistance/Contact; AF FORM 1587, Military Equal Opportunity Formal Complaint Summary; AF FORM 1587–1, Military Equal Opportunity Informal Complaint Summary; OMB Control Number 0701–XXXX.

Needs and Uses: The information collection requirement is necessary to counsel, process, investigate and adjudicate complaints of unlawful discrimination brought by contractors, retirees, and dependents. The information is used to investigate and resolve complaints of unlawful discrimination and sexual harassment under the AF Equal Opportunity Program, and to maintain records created as a result of the filing of allegations and appeals involving unlawful discrimination because of race, color, religion, sex, national origin, age, physical/mental disability, or genetic information, reprisal for participating in the EEO process or opposing discriminatory practices.

Affected Public: Individuals or households.

Annual Burden Hours: 1060.

Number of Respondents: 530.

Responses per Respondent: 1.

Annual Responses: 530.

Average Burden per Response: 2 hours.

Frequency: On occasion.

Respondents are contractors, retirees, AF applicants for employment, former AF employees, and family members of military and civilian employees who provide a variety of personal information to a certified EO Specialist/Counselor/Advisor. The information is then utilized for case management, recordkeeping, tracking, quarterly and annual statistical reporting. The information is requested once the respondent contacts (via phone, email, office, mail correspondence) the EO office and then is transferred into the AF EO IT System for further processing. All information provided becomes a part of the respondent's case file. Generally, the information is collected once; however, on occasion, the same respondent may file multiple complaints. Although the information requested is voluntary, not providing the information may delay case processing or cause case file not to be processed at all. Additionally, these records and/or information in these records may be used to report records as required by the FY 98 National Defense Authorization Act, and utilized as a data source for descriptive statistics; to provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual; or for disclosure to an authorized formal complaints auditor, administrative judge, equal employment opportunity investigator, arbitrator or other authorized official(s) involved in the investigation or settlement of a formal complaint or appeal.

Dated: July 26, 2016.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2016–18008 Filed 7–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2016–HQ–0006]

Proposed Collection; Comment Request

AGENCY: Air Force Reserve Officer Training Corps (AFROTC), Department of Defense/Department of the Air Force/Headquarters.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 27, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the AFROTC Scholarship Program, ATTN: Mr. Jack Sanders, 551 E. Maxwell Blvd., Maxwell AFB AL 36112 or call 334–953–2869.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: AFROTC Scholarship Program On-Line Application; OMB Control Number 0701–0101.

Needs and Uses: The AFROTC scholarship application is required for completion by high school seniors and recent graduates for the purpose of competing for an AFROTC 4 year scholarship. Respondents must complete and submit their application via the AFRTOC.com Web site. Submitted data will be evaluated by AFROTC scholarship selections boards to determine eligibility and to select individuals for the award of a college scholarship. The following is required to be provided by the applicant and maintained by AFROTC: Names, addresses, social security numbers, telephone numbers, transcripts, and resumes. The following documentation is provided as part of the application: Counselor Certification/signed copy of transcript (9th–11th grades only), extracurricular activity sheet, GPA and SAT and/or ACT scores, physical fitness assessment, and resume.

Affected Public: High school seniors and recent graduates who apply for an AFROTC scholarship.

Annual Burden Hours: 7,500.
Number of Respondents: 15,000.
Responses per Respondent: 1.
Annual Responses: 15,000.
Average Burden per Response: 30 minutes.
Frequency: Annually.

Dated: July 26, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–18042 Filed 7–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2016–HQ–0029]

Proposed Collection; Comment Request

AGENCY: U.S. Army Combat Readiness Center, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Combat Readiness Center announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 27, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Combat Readiness Center, ATTN: Mrs. Jennifer Hoskins, Building 4905 Ruf Avenue, Fort Rucker, AL 36362,or call at 334–255–3857.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Army Aviation and Ground Accident Reporting; DA Form 285 (Ground Accident Report), DA Form 285–AB (Abbreviated Ground Accident Report), DA Form 2397–AB (Abbreviated Aviation Accident Report), DA Form 2397–8, (Aviation Accident Report-Personnel Information) and DA Form 2397–9 (Aviation Accident Report-Injury/Occupational Illness Data), DA Form 2397–U (Unmanned Aircraft System Accident Report); OMB Control Number 0702–XXXX.

Needs and Uses: The information collection requirement is necessary to monitor and facilitate the U.S. Army's safety programs; to analyze accident experience and exposure information; to analyze and correlate relationships between planned actions and resultant accidents; and to support the Army's accident prevention efforts.

Affected Public: Individuals or Households.

Annual Burden Hours: 458.

Number of Respondents: 500.

Responses per Respondent: 1.

Annual Responses: 500.

Average Burden per Response: 55 minutes.

Frequency: On occasion.

U.S. Army Safety Center personnel retrieve data from accident prevention studies by name, Social Security Number (SSN), age, or gender. Accident and incident case records are retrieved by date of incident, location of incident, or type of equipment involved. Paper records are maintained in locked file cabinets and information is accessible only by authorized personnel with appropriate clearance/access in the performance of their duty. Remote terminal access is only authorized by authorized personnel. Maintaining this accident data is critical in maintaining the integrity of the accident prevention process.

Dated: July 25, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–17924 Filed 7–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0441; Docket Number DARS–2016–0019]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by *August 29, 2016.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Part 246, Quality Assurance, and related clauses at 252.246; OMB Control Number 0704–0441.

Type of Request: Extension.

Number of Respondents: 54,250.

Responses per Respondent: 1.

Annual Responses: 54,250.

Average Burden per Response: Approximately .5 hours.

Annual Burden Hours: 27,250.

Needs and Uses: DoD needs to ensure that the Government receives timely notification of item nonconformances or deficiencies that could impact safety. The Procuring Contracting Officer and the Administrative Contracting Officer use the information to ensure that the customer is aware of potential safety issues in delivered products, has a basic understanding of the circumstances, and has a point of contact to begin addressing a mutually acceptable plan of action. In addition, DoD needs to track warranties for Item Unique Item Identification (IUID) required items in the IUID registry. The identification and enforcement of warranties is essential to the effectiveness and efficiency of DoD's material readiness.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Frequency: On occasion.

Respondent's Obligation:

a. The clause at DFARS 252.246–7003, Notification of Potential Safety Issues, requires contractors to provide notification of (1) all nonconformances for parts identified as critical safety items acquired by the Government under the contract, and (2) all nonconformances or deficiencies that may result in a safety impact for systems, or subsystems, assemblies, subassemblies, or parts integral to a system acquired by or serviced for the Government under the contract.

b. The provision at DFARS 252.246–7005, Notice of Warranty Tracking of Serialized Items, requires an offeror to provide with its offer, for each contract line item number, warranty tracking information for each warranted item.

c. The clause at DFARS 252.246–7006, Warranty Tracking of Serialized Items, requires contractors, for warranted items, to provide (1) the unique item identifier, and (2) the warranty repair source information and instructions.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Publication Collections Program, WHS/ESD Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2016–18007 Filed 7–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0434; Docket Number DARS–2016–0018]

Agency Information Collection Activities; Proposals, Submissions and Approvals

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD)

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by *August 29, 2016*.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS); Radio Frequency Identification Advance Shipment Notices; OMB Control Number 0704–0434.

Type of Request: Extension.

Number of Respondents: 5,217.

Responses per Respondent: 3,782.

Annual Responses: 19,732,850.

Average Burden per Response: Approximately 1.16 seconds.

Annual Burden Hours: 6,353.

Needs and Uses: DoD uses advance shipment notices for the shipment of material containing Radio Frequency Identification (RFID) tag data. DoD receiving personnel use the advance shipment notice to associate the unique identification encoded on the RFID tag with the corresponding shipment. Use of the RFID technology permits DoD an automated and sophisticated end-to-end supply chain that has increased visibility of assets and permits delivery of supplies to the warfighter more quickly.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Frequency: On Occasion.

Respondent's Obligation: The clause at DFARS 252.211–7006, Passive Radio Frequency Identification, requires the contractor to ensure that the data on each passive RFID tag are unique and conform to the requirements that they are readable and affixed to the appropriate location on the specific level of packaging in accordance with MIL–STD–129 tag placement specifications. The contractor shall encode an approved RFID tag using the appropriate instructions at the time of contract award. Regardless of the selected encoding scheme, the contractor is responsible for ensuring that each tag contains a globally unique identifier. The contractor shall electronically submit advance shipment notices with the RFID tag identification in advance of the shipment in accordance with the procedures at *https://wawf.eb.mil/*.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Publication Collections Program, WHS/ESD Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2016–18006 Filed 7–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0216; Docket Number DARS–2016–0012]

Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by August 29, 2016.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 228, Bonds and Insurance, and related clauses at 252.228; OMB Control Number 0704–0216.

Type of Request: Extension.

Number of Respondents: 120.

Responses per Respondent: 1.

Annual Responses: 120.

Average Burden per Response: Approximately 3.88 hours.

Annual Burden Hours: 466.

Needs and Uses: DoD uses the information obtained through this collection to determine the allowability of a contractor's costs of providing war-hazard benefits to its employees; to determine the need for an investigation regarding an accident that occurs in connection with a contract; and to determine whether a contractor performing a service or construction contract in Spain has adequate insurance coverage.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Frequency: On occasion.

Respondent's Obligation

a. DFARS 252.228–7000, Reimbursement for War-Hazard Losses, requires the contractor to provide notice and supporting documentation to the contracting officer regarding potential claims, open claims, and settlements providing war-hazard benefits to contractor employees.

b. DFARS 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, requires the contractor to report promptly to the administrative contracting officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with the contract.

c. DFARS 252.228–7006, Compliance with Spanish Laws and Insurance, requires the contractor to provide the contracting officer with a written representation that the contractor has obtained the required types of insurance in the minimum amounts specified in the clause, when performing a service or construction contract in Spain.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number, and title for the **Federal Register** document. The general policy for comments and other public submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: Publication Collections Program, WHS/ESD Information Management Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2016–18005 Filed 7–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–HQ–0006]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 27, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy)/ Accession Policy, Attn.: Major Arturo Roque, or call (703) 695–5527.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Request for Verification of Birth; DD Form 372; OMB Control Number 0704–0006.

Needs and Uses: Title 10, U.S.C. 505, 532, 3253, and 8253, require applicants meet minimum and maximum age and citizenship requirements for enlistment into the Armed Forces (including the Coast Guard). If an applicant is unable to provide a birth certificate, the recruiter will forward a DD Form 372, "Request for Verification of Birth," to a state or local agency requesting verification of the applicant's birth date. This verification of the birth date ensures that the applicant does not fall outside the age limitations, and the applicant's place of birth supports the citizenship status claimed by the applicant.

Affected Public: State, Local, or Tribal Government.

Annual Burden Hours: 8,200.

Number of Respondents: 140,000.

Responses per Respondent: 1.

Annual Responses: 140,000.

Average Burden per Response: .058 hours.

Frequency: On Occasion.

Dated: July 26, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–18041 Filed 7–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0088]

Agency Information Collection Activities; Comment Request; Student Support Services Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 27, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0088. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Harold Wells, 202–453–6131.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Student Support Services Annual Performance Report.

OMB Control Number: 1840–0525.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 1,072.

Total Estimated Number of Annual Burden Hours: 16,348.

Abstract: Student Support Services (SSS) program grantees must submit the Annual Performance Report (APR) annually. The reports are used to evaluate grantees' performance for substantial progress, respond to GPRA requirements, and award prior experience points at the end of each project (budget) period. The Department also aggregates the data to provide descriptive information on the projects and to analyze the impact of the (SSS) Program on the academic progress of participating students. The revisions to the APR are as follows: Field 6b IPEDS Unit ID is the primary source for data on colleges, universities, and technical and vocational postsecondary institutions in the United States, Section I, Part 3 Competitive Preference Priorities is a collection of supporting data of the interventions proposed during the Student Support Services grant competition, Field 38 Participant's Case Number is a TRIO generated number to be used as a "match key" to ensure accuracy and consistency in reporting; data for that field can be downloaded from the SSS APR Web site and Field 39 Deceased participant status which allows respondents to report on deceased participants.

Dated: July 26, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–17979 Filed 7–28–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0058]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Impact Aid Program Application for Section 7002 Assistance

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 29, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0058. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2e–349, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amanda Ognibene, 202–453–6637.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Aid Program Application for Section 7002 Assistance

OMB Control Number: 1810–0036

Type of Review: An extension of an existing information collection

Respondents/Affected Public: State, Local, and Tribal Governments

Total Estimated Number of Annual Responses: 250

Total Estimated Number of Annual Burden Hours: 375

Abstract: The U.S. Department of Education is requesting an extension for the Application for Assistance under Section 7002 of Title VII of the Elementary and Secondary Education Act (ESEA). This application is for a grant program otherwise known as Impact Aid Payments for Federal Property. Local Educational Agencies (LEAs) that have lost taxable property due to Federal activities request financial assistance by completing an annual application. Please note that this formula grant program was previously authorized under Title VIII of the ESEA (as amended), but will move to Title VII under the Every Student Succeeds Act, which reauthorized the ESEA, effective for FY 2017. Regulations for Section 7002 of the Impact Aid Program are found at 34 CFR 222, Subpart B.

Dated: July 25, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–17894 Filed 7–28–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0059]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Survey on the Use of Funds Under Title II, Part A: Improving Teacher Quality State Grants—State-Level Activity Funds

AGENCY: Department of Education (ED), Office of Elementary and Secondary Education (OESE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 29, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0059. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–349, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Elizabeth Witt, 202–260–5585.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey on the Use of Funds Under Title II, Part A: Improving Teacher Quality State Grants—State-Level Activity Funds.

OMB Control Number: 1810–0711.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 260.

Abstract: The reauthorized Elementary and Secondary Education Act (ESEA) places a major emphasis on teacher quality as a significant factor in improving student achievement. Under ESEA, Title II, Part A provides funds to states (SEAs) and school districts (LEAs) to conduct a variety of teacher-related reform activities. ESEA funds can be used for a variety of teacher quality activities in any subject area. Although the majority of funds are provided to LEAs, allowable SEA uses of funds include: Reforming teacher and principal certification (including recertification) and licensure to ensure that teachers have the necessary subject-matter knowledge and teaching skills in the subjects they teach; and providing support to teachers and principals through programs such as teacher mentoring, team teaching, reduced class schedules, intensive professional development, and using standards or assessments to guide beginning teachers; and carrying out programs to establish, expand, or improve alternative routes for state certification for teachers and principals (especially in mathematics and science) that will encourage highly qualified individuals with at least a baccalaureate degree; and developing and implementing effective mechanisms that help LEAs and schools recruit and retain highly qualified teachers, principals, and pupil services personnel; and reforming tenure systems, implementing teacher testing for subject-matter knowledge, and implementing teacher testing for state certification or licensure, consistent with Title II of the Higher Education Act.

Dated: July 25, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–17895 Filed 7–28–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Renewal

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to renew, for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the renewed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before September 27, 2016. If you anticipate difficulty in submitting comments within that period or if you want access to the collection of information, without charge, contact the person listed below as soon as possible.

ADDRESSES: Written comments should be sent to the following: Richard Bonnell, U.S. Department of Energy, Office of Acquisition Management, 1000 Independence Avenue SW., Washington, DC 20585–0121 or by email at *richard.bonnell@hq.doe.gov.* Please put "2016 DOE Agency Information Collection Renewal" in the subject line when sending an email.

FOR FURTHER INFORMATION CONTACT: Richard Bonnell by email at *richard.bonnell@hq.doe.gov.* Please put "2016 DOE Agency Information Collection Renewal" in the subject line when sending an email.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–0400 (Renewal); (2) Information Collection Request Title: DOE Financial Assistance Information Clearance; (3) Type of Review: Renewal; (4) Purpose: This information collection package covers mandatory collections of information necessary to annually plan, solicit, negotiate, award and administer grants and cooperative agreements under the Department's financial assistance programs. The information is used by Departmental management to exercise management oversight with respect to implementation of applicable statutory and regulatory requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which awardees meet the terms of their agreements; that public funds are spent in the manner intended; and that fraud, waste, and abuse are immediately detected and eliminated; (5) Annual Estimated Number of Respondents: 11,134; (6) Annual Estimated Number of Total Responses: 39,378; (7) Estimated Number of Burden Hours: 532,067; and (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $0

Statutory Authorities: Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301–6308.

Issued in Washington, DC, on July 21, 2016.

John Bashista,

Director, Office of Acquisition Management, Department of Energy.

[FR Doc. 2016–17983 Filed 7–28–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Call for U.S.-China Energy Performance Contracting Pilot Projects To Be Recognized at the 7th Annual U.S.-China Energy Efficiency Forum

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of request for project submissions.

SUMMARY: The Department of Energy (DOE) gives notice of a request for submission of innovative U.S.-China energy performance contracting (EPC) projects. EPC projects at public, commercial, and industrial facilities located in the U.S. or China with project participation from at least one U.S. entity and at least one Chinese entity are eligible. Eligible entities include energy service companies (ESCOs), technology providers, facility owners or operators, and financiers. EPC projects that meet the 2016 Pilot Project Criteria and demonstrate replicability will receive special recognition at the 7th Annual U.S.-China Energy Efficiency Forum in October 2016 in Beijing. Some recognition recipients will be invited to speak at a special breakout session.

DATES: Project submissions for consideration must be received by August 22, 2016.

ADDRESSES: Project submissions should be emailed in English and Chinese to the Pacific Northwest National Laboratory and ESCO Committee of China Energy Conservation Association at the email addresses provided below. "The Pilot Project Criteria 2016" and "Appendix: Project Submission Template" can be found on: *http://www.globalchange.umd.edu/archived-research-areas/energy-efficiency-and-mitigation/epc/.*

Applicants must complete the Chinese and English project submission template and draft a proposed MOU. The proposed MOU should memorialize the cooperation of U.S. and Chinese entities applying as a team, set out their intention to do an EPC project(s); and include all minimum U.S.-China EPC Pilot Project Program requirements. Submit one email with project submission and proposed MOU as attachments to the following email addresses: *m.evans@pnnl.gov, qing.tan@pnnl.gov* and *international@emca.cn.* Failure to submit complete, bilingual project information may result in ineligibility.

FOR FURTHER INFORMATION CONTACT:

Questions about the U.S.-China Energy Performance Contracting Initiative—Ms. Arlene Fetizanan, U.S. Department of Energy, *Arlene.Fetizanan@ee.doe.gov* or (202) 586–3124.

Questions about the energy performance contracting pilot project criteria and submission—Ms. Sha Yu, Pacific Northwest National Laboratory, *sha.yu@pnnl.gov* or (301) 314–6736.

SUPPLEMENTARY INFORMATION:

Background: This call for EPC pilot projects is part of the Energy Efficiency in Buildings and Industry Initiative under the U.S.-China Climate Change Working Group (CCWG). The CCWG was launched in 2013, and now includes nine action initiatives for understanding and addressing climate change in the United States and China. Under the CCWG Energy Efficiency in Buildings and Industry Initiative, DOE and China's National Development and Reform Commission (NDRC) launched a program to promote EPC. The program aims to improve energy efficiency and reduce emissions in the U.S. and China through deep energy retrofits, using innovative financing where appropriate. The combined $20 billion U.S. and China EPC markets have the potential to grow dramatically, delivering significant environmental and economic benefits. For more information on U.S.-China EPC market trends and resources to assist clients, practitioners, and financial institutions in selecting, developing, and executing EPC projects, please visit: *http://*

www.globalchange.umd.edu/archived-research-areas/energy-efficiency-and-mitigation/epc/.

The U.S.-China Energy Efficiency Forum is an annual, invitation-only event at which the two sides discuss energy efficiency issues and develop initiatives for further collaboration. Over 200 senior private sector, NGO, and government stakeholders attend. This is the second year that DOE and NDRC have issued a request for recognition of U.S.-China EPC pilot projects at the Energy Efficiency Forum. In 2015, DOE and NDRC released their first call for U.S.-China EPC pilot project submissions for recognition. Three innovative pilot projects were recognized by senior U.S. and Chinese officials at the 6th Annual U.S.-China Energy Efficiency Forum (*http://energy.gov/eere/articles/win-win-opportunities-sixth-annual-us-china-energy-efficiency-forum*), as well as at the 2016 U.S.-China Strategic and Economic Dialogue.

Objective: This recognition program encourages U.S. and Chinese organizations to obtain real-world experience in each other's market using innovative, feasible business models alongside local practitioners. Recognized EPC projects will use integrated solutions to foster deep energy savings, demonstrating an optimal combination of project development and design, energy auditing, energy savings guarantees, third-party financing, contracting, and Measurement and Verification (M&V). For example, an innovative pilot project may consist of a bundle of short and long-payback measures for an attractive overall return on investment and deeper energy savings than shorter-payback measures, alone. The initiative aims to encourage as many noteworthy projects as practical in the public infrastructure, public and commercial buildings and industrial facilities sectors. All projects recognized should have participation from both Chinese and U.S. entities.

The list of 2016 Pilot Project Criteria has been vetted by both DOE and NDRC (*http://www.globalchange.umd.edu/data/epc/Pilot_Project_Opportunity_2016_ENG_CHN_final.pdf*). Applicants must complete the Chinese and English project submission template and draft a proposed MOU. The proposed MOU should memorialize the cooperation of U.S. and Chinese entities applying as a team, set out their intention to do an EPC project(s); and include all minimum U.S.-China EPC Pilot Project Program requirements. In order to meet requirements, applications should describe the facility that will undergo a retrofit under an EPC and who the primary participants are. EPC pilot projects should include participation by both U.S. and Chinese stakeholders. The application should outline an integrated approach that will retrofit at least three systems and reduce energy consumption relative to baseline conditions. The EPC pilot project should utilize innovative financing, contracting and/or M&V and indicate how it is noteworthy relative to traditional EPCs in the market. Applicants agree to share project progress and data on energy savings quarterly. EPC pilot projects must start within nine months after signing the MOU. Refer to "The Pilot Project Criteria 2016" and "Appendix: Project Submission Template" in the link above for more requirement details. Failure to submit complete, bilingual project information may result in ineligibility.

Issued in Washington, DC, on July 21, 2016.

Robert L. Sandoli,

Director of International Programs, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2016–17986 Filed 7–28–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[EERE–2016–WAP–GUID–001]

Updating Weatherization Health and Safety Guidance

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of availability and request for public comment.

SUMMARY: The U.S. Department of Energy (DOE) is updating Weatherization Health and Safety Guidance related to the implementation and installation of health and safety measures as part of the DOE Weatherization Assistance Program (WAP). The draft guidance also provides required components for Grantees to include in their Health and Safety (H&S) Plans. This guidance will assist Grantee decision-making during H&S Plan development.

This notice also serves to inform the public of the availability of an online tool which provides notification of, and allows individuals to submit comments on, the draft guidance related to the DOE Weatherization Assistance Program. All future draft guidance releases will be made via the online tool. Individuals who wish to receive notification of draft guidance releases may receive that notification via the online tool. For information on the web address of the online tool see the **ADDRESSES** section of this notice.

DATES: DOE will accept written comments until August 29, 2016. For more information on how to submit comments, please see the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections of this notice.

ADDRESSES: DOE's draft Weatherization and Health and Safety Guidance is available via the online commenting tool at: *http://doe.civicomment.org/* Interested parties are invited to submit comments on the guidance via this online tool.

FOR FURTHER INFORMATION CONTACT: Erica Burrin; U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., EE5W, Washington, DC 20585; (202) 280–9863; *Erica.Burrin@ee.doe.gov.*

For legal issues, please contact Kavita Vaidyanathan; U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW., GC–33, Washington, DC 20585; (202) 586–0669; *Kavita.Vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) is updating its Weatherization Assistance Program (WAP) Weatherization Health and Safety Guidance to clarify, update and provide additional information related to the implementation and installation of health and safety measures as part of the DOE WAP. This draft guidance also provides required components for Grantees to include in their Health and Safety (H&S) Plans. The guidance and attachments supersede the following:

WPN 11–6a, Supplemental Health and Safety Guidance
WPNs 11–6, Health and Safety Guidance
WPN 09–6, Lead Safe Weatherization (LSW) Additional Materials and Information
WPN 08–6, Interim Lead-Safe Weatherization Guidance
WPN 08–4, Space Heater Policy
WPNs 02–6, Weatherization Activities and Federal Lead-Based Paint Regulations
WPN 02–5, Health and Safety Guidance

It is DOE's aim that this guidance will better assist Grantee decision-making during H&S Plan development.

Grantees may create more stringent requirements as long as those requirements do not conflict with this guidance.

Submitting Comments on the Draft Weatherization Health and Safety Guidance

DOE will accept comments regarding the draft Weatherization Health and Safety Guidance no later than the date provided in the **DATES** section at the beginning of this notice. Interested parties are invited to submit comments via the online tool as outlined in the **ADDRESSES** section of this notice.

Issued in Washington, DC on July 14, 2016.

AnnaMaria Garcia,

Director, Office of Weatherization and Intergovernmental Program, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–17751 Filed 7–28–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–13–000]

Commission Information Collection Activities (FERC–547); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–547 (Gas Pipeline Rates: Refund Report Requirements).

DATES: Comments on the collection of information are due September 27, 2016.

ADDRESSES: You may submit comments (identified by Docket No. IC16–13–000) by either of the following methods:

- eFiling at Commission's Web site: *http://www.ferc.gov/docs-filing/efiling.asp.*
- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: Gas Pipeline Rates: Refund Report Requirements.

OMB Control No.: 1902–0084.

Type of Request: Three-year extension of the FERC–547 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission uses FERC–547 (Gas Pipeline Rates: Refund Report Requirements) to implement the statutory refund provisions governed by Sections 4, 5 and 16 of the Natural Gas Act (NGA).[1] Sections 4 and 5 authorize the Commission to order a refund (with interest) for any portion of a natural gas company's increased rate or charge found to be unjust or unreasonable. Refunds may also be instituted by a natural gas company as a stipulation to a Commission-approved settlement agreement or a provision under the company's tariff. Section 16 of the NGA authorizes the Commission to prescribe rules and regulations necessary to administer its refund mandates. The Commission's refund reporting requirements are located in 18 CFR 154.501 and 154.502.

The Commission uses the data to monitor refunds owed by natural gas companies to ensure that the flow-through of refunds owed by these companies are made as expeditiously as possible and to assure that refunds are made in compliance with the Commission's regulations.

Type of Respondents: Natural gas companies.

Estimate of Annual Burden:[2] The Commission estimates the annual public reporting burden for the information collection as:

FERC—547: GAS PIPELINE RATES: REFUND REPORT REQUIREMENTS

Number of respondents	Annual number of responses per respondent (1)	Total humber of responses (2)	Average burden & cost per response[5] (1)×(2)=(3)	Total annual burden hours & total annual cost (4)	Cost per respondent ($) (3)*(4)=(5)	(5)÷(1)
Natural Gas Pipelines ..	11	1	11	75 hrs.; $5,587.50	825 hrs.; $61,462.50 ...	$5,587.50

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: July 25, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–18039 Filed 7–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–98–000; PF15–29–000]

Dominion Carolina Gas Transmission, LLC; Notice of Schedule for Environmental Review of the Transco to Charleston Project

On March 9, 2016, Dominion Carolina Gas Transmission, LLC (Dominion) filed an application in Docket No. CP16–98–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Transco to Charleston Project (Project), and would provide firm transportation service of 80,000 dekatherms per day (Dth/day) to local commercial, industrial, and power generation customers.

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[1] 15 U.S.C. 717–717w.

[2] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[3] The cost is based on FERC's 2016 average cost (salary plus benefits) of $74.50/hour. The Commission staff believes that the industry's level and skill set is comparable to FERC.

On March 21, 2016, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA September 19, 2016

90-day Federal Authorization Decision Deadline December 18, 2016

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Dominion would construct and operate 55 miles of 12-inch-diameter natural gas pipeline in Spartanburg, Laurens, Newberry, and Greenwood Counties, South Carolina; 5 miles of 4-inch-diameter natural gas pipeline in Dillon County, South Carolina; a new 3,600-horsepower (hp) compressor station in Dorchester County, South Carolina; add 2,800 hp of compression at an existing compressor station in Spartanburg County, South Carolina; modify operation at an existing compressor station in Aiken County, South Carolina; and construct and operate support facilities in Aiken, Charleston, Dillon, Dorchester, Greenwood, Laurens, Newberry, and Spartanburg Counties, South Carolina.

Background

On October 30, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Transco to Charleston Project and Request for Comments on Environmental Issues* (NOI). The NOI was issued during the pre-filing review of the Project in Docket No. PF15–29–000 and was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from the U.S. Fish and Wildlife Service, the South Carolina Department of Natural Resources, the Columbia South Carolina Chamber of Commerce, the South Carolina Electric and Gas Company, the Natural Gas Supply Association, Upstate Forever, and 20 landowners. The primary issues raised by the commentors are potential crossings of private lands, wildlife species and habitat, and water quality, as well as general support for, and opposition to, the Project.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (*i.e.,* CP16–98), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: July 25, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–18040 Filed 7–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–558–000]

PennEast Pipeline Company, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Penneast Pipeline Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the PennEast Pipeline Project, proposed by PennEast Pipeline Company, LLC (PennEast) in the above-referenced docket. PennEast requests authorization to construct and operate a 118.8-mile-long pipeline to provide 1.1 million dekatherms per day (MMDth/d) of year-round natural gas transportation service from northern Pennsylvania to markets in eastern Pennsylvania, New Jersey, and surrounding states.

The draft EIS assesses the potential environmental effects of the construction and operation of the PennEast Pipeline Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts, but impacts would be reduced to less-than-significant levels with the implementation of PennEast's proposed and FERC staff recommended mitigation measures. This determination is based on a review of the information provided by PennEast and further developed from data requests; field investigations; scoping; literature research; alternatives analysis; and contacts with federal, state, and local agencies as well as Indian tribes and individual members of the public.

The U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Department of Agriculture, Natural Resource Conservation Service, and U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although these agencies provided input to the conclusions and recommendations presented in the draft EIS, the agencies will present their own conclusions and recommendations in any respective record of decision or determination for the Project.

The draft EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- 115.1 miles of new, 36-inch-diameter pipeline extending from Luzerne County, Pennsylvania to Mercer County, New Jersey (77 miles in Pennsylvania and 38 miles in New Jersey);
- the 2.1-mile Hellertown Lateral consisting of 24-inch-diameter pipe in Northampton County, Pennsylvania;
- the 0.1-mile Gilbert Lateral consisting of 12-inch-diameter pipe in Hunterdon County, New Jersey;
- the 1.5-mile Lambertville Lateral consisting of 36-inch-diameter pipe in Hunterdon County, New Jersey;
- new, 47,700 total hp Kidder Compressor Station in Kidder Township, Carbon County, Pennsylvania; and
- associated aboveground facilities including eight metering and regulating stations for interconnections, 11 main line valve sites, and four pig launcher/receiver sites.

The FERC staff mailed copies of the draft EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. Paper copy versions of this EIS (Volume I in paper copy, Volumes II and III on CD) were mailed to those specifically requesting them; all others received a CD version of the entire document. In addition, the draft EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the draft EIS may do so. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before September 12, 2016.

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP15–558–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426;

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public comment meetings its staff will conduct in the project area to receive comments on the draft EIS. To ensure interested parties have ample opportunity to attend a public comment meeting six meetings are scheduled as follows:

Date and time	Location
Monday, August 15, 2016 6–10 p.m.	Best Western Lehigh Valley & Conference Center, 300 Gateway Drive, Bethlehem, PA 18017, Phone: 610–866–5800.
Monday, August 15, 2016 6–10 p.m.	Penn's Peak, 325 Maury Road, Jim Thorpe, PA 18229, Phone: 610–826–9000.
Tuesday, August 16, 2016 6–10 p.m.	Grand Colonial, 86 Route 173 West, Hampton, NJ 08827, Phone: 908–735–7889.
Tuesday, August 16, 2016 6–10 p.m.	Peddler's Village, (Lahaska and Neshaminy Rooms), Routes 202 & 263, Lahaska, PA 19831, Phone: 215–794–4000.
Wednesday, August 17, 2016 6–10 p.m.	Best Western Genetti Hotel & Conference Center, 77 E Market Street, Wilkes-Barre, PA 18701, Phone: 570–823–6152.
Wednesday, August 17, 2016 6–10 p.m.	Clifford B. Memorial Hall, 1666 Pennington Road, Ewing, NJ 08618, Phone: 609–882–3221.

The meetings will be scheduled from 6:00 p.m. to 10:00 p.m. There *will not* be a formal presentation by Commission staff. The primary goal will be to have your verbal environmental comments on the draft EIS documented in the public record. Verbal comments will be recorded by stenographers in one-on-one settings, and transcriptions will be placed into the docket for the project and made available for public viewing on FERC's eLibrary system (see below for instructions on using eLibrary). If a significant number of people are interested in providing verbal comments in the one-on-one settings, a time limit of 3 to 5 minutes may be implemented for each commenter. It is important to note that verbal comments hold the same weight as written or electronically submitted comments. Although there will not be a formal presentation, Commission staff will be available throughout the meetings to answer your questions about the environmental review process.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, CP15–558–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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[1] See the previous discussion on the methods for filing comments.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: July 22, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–18038 Filed 7–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–156–000.
Applicants: Town Square Energy East, LLC, Town Square Energy, LLC.
Description: Application of Town Square Energy East, LLC, et al. for Authorization Under Federal Power Act Section 203 and Requests for Expedited Treatment and Confidential Information.
Filed Date: 7/22/16.
Accession Number: 20160722–5197.
Comments Due: 5 p.m. ET 8/12/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2035–000.
Applicants: Black Oak Wind, LLC.
Description: Supplement to June 27, 2016 Black Oak Wind, LLC tariff filing.
Filed Date: 7/21/16.
Accession Number: 20160721–5124.
Comments Due: 5 p.m. ET 8/1/16.

Docket Numbers: ER16–2194–000.
Applicants: Clinton Battery Utility, LLC.
Description: Supplement to July 14, 2016 Clinton Battery Utility, LLC submits filing.
Filed Date: 7/22/16.
Accession Number: 20160722–5185.
Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2272–000.
Applicants: Puget Sound Energy, Inc
Description: § 205(d) Rate Filing: Attachment O Revisions to Implement Intrachange Scheduling and Imbalance Charges to be effective 9/20/2016.
Filed Date: 7/22/16.
Accession Number: 20160722–5180.
Comments Due: 5 p.m. ET 8/12/16.

Docket Numbers: ER16–2273–000.
Applicants: Passadumkeag Windpark, LLC.
Description: § 205(d) Rate Filing: Passadumkeag Market-Based Rate Tariff Amendment Filing to be effective 7/26/2016.
Filed Date: 7/25/16.
Accession Number: 20160725–5057.
Comments Due: 5 p.m. ET 8/15/16.

Docket Numbers: ER16–2274–000.
Applicants: Parrey, LLC.
Description: § 205(d) Rate Filing: Parrey Market-Based Rate Tariff Amendment Filing to be effective 7/26/2016.
Filed Date: 7/25/16.
Accession Number: 20160725–5058.
Comments Due: 5 p.m. ET 8/15/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 25, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17993 Filed 7–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1098–000.
Applicants: Dominion Carolina Gas Transmission, LLC.
Description: § 4(d) Rate Filing: DCGT—July 20, 2016, Administrative Changes to be effective 8/19/2016.
Filed Date: 7/20/16.
Accession Number: 20160720–5086.
Comments Due: 5 p.m. ET 8/1/16.

Docket Numbers: RP16–1099–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Update Filing—Colorado Springs Utilities to be effective 8/1/2016.
Filed Date: 7/20/16.
Accession Number: 20160720–5122.
Comments Due: 5 p.m. ET 8/1/16.

Docket Numbers: RP16–1100–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2016–07–20, CP, Encana to be effective 7/21/2016.
Filed Date: 7/20/16.
Accession Number: 20160720–5123.
Comments Due: 5 p.m. ET 8/1/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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Dated July 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17994 Filed 7–28–16; 8:45 am]

BILLING CODE 6717–01–P

site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search," and enter the docket number excluding the last three digits in the Docket Number field (*i.e.*, CP15–558–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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Dated: July 22, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–18038 Filed 7–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–156–000.

Applicants: Town Square Energy East, LLC, Town Square Energy, LLC.

Description: Application of Town Square Energy East, LLC, et al. for Authorization Under Federal Power Act Section 203 and Requests for Expedited Treatment and Confidential Information.

Filed Date: 7/22/16.

Accession Number: 20160722–5197.

Comments Due: 5 p.m. ET 8/12/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2035–000.

Applicants: Black Oak Wind, LLC.

Description: Supplement to June 27, 2016 Black Oak Wind, LLC tariff filing.

Filed Date: 7/21/16.

Accession Number: 20160721–5124.

Comments Due: 5 p.m. ET 8/1/16.

Docket Numbers: ER16–2194–000.

Applicants: Clinton Battery Utility, LLC.

Description: Supplement to July 14, 2016 Clinton Battery Utility, LLC submits filing.

Filed Date: 7/22/16.

Accession Number: 20160722–5185.

Comments Due: 5 p.m. ET 8/5/16.

Docket Numbers: ER16–2272–000.

Applicants: Puget Sound Energy, Inc

Description: § 205(d) Rate Filing: Attachment O Revisions to Implement Intrachange Scheduling and Imbalance Charges to be effective 9/20/2016.

Filed Date: 7/22/16.

Accession Number: 20160722–5180.

Comments Due: 5 p.m. ET 8/12/16.

Docket Numbers: ER16–2273–000.

Applicants: Passadumkeag Windpark, LLC.

Description: § 205(d) Rate Filing: Passadumkeag Market-Based Rate Tariff Amendment Filing to be effective 7/26/2016.

Filed Date: 7/25/16.

Accession Number: 20160725–5057.

Comments Due: 5 p.m. ET 8/15/16.

Docket Numbers: ER16–2274–000.

Applicants: Parrey, LLC.

Description: § 205(d) Rate Filing: Parrey Market-Based Rate Tariff Amendment Filing to be effective 7/26/2016.

Filed Date: 7/25/16.

Accession Number: 20160725–5058.

Comments Due: 5 p.m. ET 8/15/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 25, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17993 Filed 7–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–1098–000.

Applicants: Dominion Carolina Gas Transmission, LLC.

Description: § 4(d) Rate Filing: DCGT—July 20, 2016, Administrative Changes to be effective 8/19/2016.

Filed Date: 7/20/16.

Accession Number: 20160720–5086.

Comments Due: 5 p.m. ET 8/1/16.

Docket Numbers: RP16–1099–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Update Filing—Colorado Springs Utilities to be effective 8/1/2016.

Filed Date: 7/20/16.

Accession Number: 20160720–5122.

Comments Due: 5 p.m. ET 8/1/16.

Docket Numbers: RP16–1100–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: Neg Rate 2016–07–20, CP, Encana to be effective 7/21/2016.

Filed Date: 7/20/16.

Accession Number: 20160720–5123.

Comments Due: 5 p.m. ET 8/1/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated July 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17994 Filed 7–28–16; 8:45 am]

BILLING CODE 6717–01–P

for such requests pursuant to Part 153 of the Commission's Regulations.[3]

Type of Respondents: The respondents include all jurisdictional natural gas companies seeking authorization from the Commission to import or export natural gas.

Estimate of Annual Burden:[4] The Commission estimates the annual public reporting burden for the information collection as:

FERC–539: GAS PIPELINE CERTIFICATES: IMPORT & EXPORT RELATED APPLICATIONS

Number of respondents (1)	Annual number of responses per respondent (2)	Total humber of responses (1) * (2) = (3)	Average burden & cost per response[5] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
12	2	24	12 hrs.; $864	288 hrs.; $20,736	$1,728

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–17896 Filed 7–28–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0027; FRL–9949–73–OEI]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; On-Highway Motorcycle Certification and Compliance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), "On-Highway Motorcycle Certification and Compliance Program" (EPA ICR No. 2535.01, OMB Control No. 2060–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** (81 FR 7536) on February 12, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 29, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2016–0027 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-rdocket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Julian Davis, Compliance Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor MI 48105; telephone number: (734) 214–4029; fax number: (734) 214–4869; email address: *davis.julian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Under the Clean Air Act (42 U.S.C. 7521 *et seq.*) manufacturers and importers of on-highway motorcycles must have a certificate of conformity issued by EPA covering any vehicle they intend to offer for sale in the United States. A certificate of conformity represents that the respective vehicle conforms to all applicable emissions requirements. In issuing a certificate of conformity, EPA reviews vehicle information and emissions test data to determine if the required testing has been performed and the required emissions levels have been demonstrated. After a certificate of conformity has been issued, the Agency may request additional information to verify that the product continues to meet its certified emissions standards throughout its useful life. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9. The current ICR for on-highway motorcycle emissions certification and compliance information is set to expire on September 30, 2016. This program was previously included under the current ICR for light-duty vehicle emissions certification and in-use testing [EPA ICR No. 0783.62, OMB Control No. 2060–0104].

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[3] Part 153, Subpart B and Subpart C.

[4] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[5] The estimates for cost per response are derived using the 2015 FERC average salary plus benefits of $149,489/year (or $72.00/hour). Commission staff finds that the work done for this information collection is typically done by wage categories similar to those at FERC.

Form Numbers:

5900–300	Voluntary Emission Recall Report
5900–301	Emission Defect Information Report
5900–392	Manufacturer Request for Pre-Approval of Using Certified Data In-Lieu of New Tests
5900–394	Manufacturer Actual Model Year Production Volume Reporting Form
5900–395	Highway Motorcycle—Test Vehicle Information

Respondents/affected entities: Entities potentially affected by this action are on-highway motorcycle manufacturers and importers.

Respondent's obligation to respond: Mandatory (40 CFR 86.416–80).

Estimated number of respondents: 74 (total).

Frequency of response: Quarterly and annually.

Total estimated burden: 3,594 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $433,598 (per year), includes $113,834 annualized capital and startup costs, $151,150 operation & maintenance costs, and $168,614 in labor costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2016–17944 Filed 7–28–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0025; FRL–9949–63]

Certain New Chemicals; Receipt and Status Information for June 2016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA) to publish in the **Federal Register** a notice of receipt of a Premanufacture notice (PMN); an application for a test marketing exemption (TME), both pending and/or expired; and a periodic status report on any new chemicals under EPA review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document covers the period from June 1, 2016 to June 30, 2016.

DATES: Comments identified by the specific case number provided in this document, must be received on or before August 29, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2016–2016–0025, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, IMD 7407M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 202–564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the actions addressed in this document.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What is the agency taking?

This document provides receipt and status reports, which cover the period from June 1, 2016 to June 30, 2016, and consists of the PMNs and TMEs both pending and/or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. What is the agency's authority for taking this action?

Under TSCA, 15 U.S.C. 2601 *et seq.*, EPA classifies a chemical substance as either an "existing" chemical or a "new" chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a "new chemical," while those that are on the TSCA Inventory are classified as an "existing chemical." For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.*

Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for "test marketing" purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic reports on the status of new chemicals under review and the receipt of NOCs to manufacture those chemicals.

IV. Receipt and Status Reports

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that the information in the table is generic information because the specific information provided by the submitter was claimed as CBI.

For the 60 PMNs received by EPA during this period, Table 1 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the PMN; The date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer/importer; the potential uses identified by the manufacturer/importer in the PMN; and the chemical identity.

TABLE 1—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–16–0273	6/13/2016	9/11/2016	CBI	(G) Ingredient in metal working fluids.	(G) Alkyl heteromonocycle, polymer with heteromonocycle, carboxyalkyl alkyl ether.
P–16–0345	6/13/2016	9/11/2016	CBI	(G) Processing aid	(G) Acrylamide, polymer with methacrylic acid derivatives.
P–16–0377	6/2/2016	8/31/2016	CBI	(G) Film component	(G) Polyester polyol.
P–16–0380	6/2/2016	8/31/2016	CBI	(G) Component in electrocoat resin.	(G) Formic acid, compounds (compds.) with hydrolyzed bisphenol a-epichlorohydrin-polyethylene glycol ether with bisphenol a (2:1) polymer-*N*1-(1,3-dimethylbutylidene)-*N*2-[2-[(1,3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products acetates (salts).
P–16–0380	6/2/2016	8/31/2016	CBI	(S) Anti-Crater additive for automotive electrocoat resin.	(G) Formic acid, compds. with hydrolyzed bisphenol a-epichlorohydrin-polyethylene glycol ether with bisphenol a (2:1) polymer-*N*1-(1,3-dimethylbutylidene)-*N*2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products acetates (salts).
P–16–0381	6/2/2016	8/31/2016	CBI	(G) Component in electrocoat resin.	(G) Propanoic acid, 2-hydroxy-, compds. with hydrolyzed bisphenol a-epichlorohydrin-polyethylene glycol ether with bisphenol a (2:1) polymer-*N*1-(1,3-dimethylbutylidene)-*N*2-[2-[(1,3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products formates (salts).
P–16–0381	6/2/2016	8/31/2016	CBI	(S) Anti-Crater additive for automotive electrocoat resin.	(G) Propanoic acid, 2-hydroxy-, compds. with hydrolyzed bisphenol a-epichlorohydrin-polyethylene glycol ether with bisphenol a (2:1) polymer-*N*1-(1,3-dimethylbutylidene)-*N*2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products formates (salts).
P–16–0382	6/2/2016	8/31/2016	CBI	(G) Component in electrocoat resin.	(G) Formic acid, compds. with hydrolyzed bisphenol a-epichlorohydrin-polyethylene glycol ether with bisphenol a (2:1) polymer-*N*1-(1,3-dimethylbutylidene)-*N*2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products sulfamates(salts).
P–16–0382	6/2/2016	8/31/2016	CBI	(S) Anti-Crater additive for automotive electrocoat resin.	(G) Formic acid, compds. with hydrolyzed bisphenol a-epichlorohydrin-polyethylene glycol ether with bisphenol a (2:1) polymer-*N*1-(1,3-dimethylbutylidene)-*N*2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products sulfamates (salts).
P–16–0383	6/2/2016	8/31/2016	CBI	(S) Anti-Crater additive for automotive electrocoat resin.	(G) Formic acid, compds. with hydrolyzed bisphenol a-epichlorohydrin-polyethylene glycol ether with bisphenol a (2:1) polymer-*N*1-(1,3-dimethylbutylidene)-*N*2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products acetates (salts).

TABLE 1—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–16–0384	6/2/2016	8/31/2016	CBI	(G) Component of electrocoat resin.	(G) Propanoic acid, 2-hydroxy-, compds. with hydrolyzed bisphenol a-epichlorohydrin-polyethylene glycol ether with bisphenol a (2:1) polymer-*N*1-(1,3-dimethylbutylidene)-*N*2-[2-[(1,3-dimethylbutylidene)amino]-ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products formates (salts).
P–16–0384	6/2/2016	8/31/2016	CBI	(S) Anti-Crater additive for automotive electrocoat resin.	(G) Propanoic acid, 2-hydroxy-, compds. with hydrolyzed bisphenol a-epichlorohydrin-polyethylene glycol ether with bisphenol a (2:1) polymer-*N*1-(1,3-dimethylbutylidene)-*N*2-[2-[(1,3-dimethylbutylidene)amino]-ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products formates (salts).
P–16–0385	6/2/2016	8/31/2016	CBI	(G) Component in electrocoat resin.	(G) Formic acid, compds. with hydrolyzed bisphenol a-epichlorohydrin-polyethylene glycol ether with bisphenol a (2:1) polymer-*N*1-(1,3-dimethylbutylidene)-*N*2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products sulfamates(salts).
P–16–0385	6/2/2016	8/31/2016	CBI	(S) Anti-Crater additive for automotive electrocoat resin.	(G) Formic acid, compds. with hydrolyzed bisphenol a-epichlorohydrin-polyethylene glycol ether with bisphenol a (2:1) polymer-*N*1-(1,3-dimethylbutylidene)-*N*2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products sulfamates(salts).
P–16–0394	6/7/2016	9/5/2016	CBI	(G) Adhesive	(G) Benzenedicarboxylic acid, polymer with decanedioic acid and dodecanedioic acid, ethanediol, hexanedioic acid, hexanediol, alpha-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], isobenzofurandione,1,1′-methylenebis[4-isocyanatobenzene], phenol and trimethylbicyclo hept-2-ene.
P–16–0395	6/2/2016	8/31/2016	CBI	(S) Polymeric intermediate for the production of acrylic polymers for industrial coatings.	(G) Methacrylic acid, polymer with alkyl methacrylates and substituted acrylamide, ammonium salt.
P–16–0396	6/2/2016	8/31/2016	CBI	(G) Specialty chemical for processing additive.	(G) Alkylaminium hydroxide.
P–16–0398	6/6/2016	9/4/2016	CBI	(G) Corrosion inhibitor	(G) Di-ammonium di-carboxylate.
P–16–0399	6/17/2016	9/15/2016	Tryeco Llc	(S) Agricultural soil amendment for filed crops seed coating and turf.	(S) Starch, polymer with 2-propenoic acid, potassium salt. oxidized.
P–16–0400	6/6/2016	9/4/2016	Shell Chemical LP	(S) Use in cured coatings.	(S) Alkanes, C_{11-16}-branched and linear.
P–16–0400	6/6/2016	9/4/2016	Shell Chemical LP	(S) Agrochemical	(S) Alkanes, C_{11-16}-branched and linear.
P–16–0400	6/6/2016	9/4/2016	Shell Chemical LP	(S) Metalworking fluid use.	(S) Alkanes, C_{11-16}-branched and linear.
P–16–0400	6/6/2016	9/4/2016	Shell Chemical LP	(S) Use in cleaning fluids.	(S) Alkanes, C_{11-16}-branched and linear.
P–16–0400	6/6/2016	9/4/2016	Shell Chemical LP	(S) Chemical intermediate	(S) Alkanes, C_{11-16}-branched and linear.
P–16–0402	6/7/2016	9/5/2016	CBI	(S) Flotation additive for use in mineral processing.	(G) Propanediamine, [(isoalkyloxy)propyl] derivs., salts.
P–16–0403	6/15/2016	9/13/2016	CBI	(G) Open non dispersive use.	(G) Heteropolycyclic carboxylic acid, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol and 4-substitutedbenzene, substituted carbomonocycle- and alkyl-substituted carbomonocycle-blocked.

Table 1—PMNs Received From June 1, 2016 to June 30, 2016—Continued

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–16–0404	6/8/2016	9/6/2016	CBI	(G) A colorant for dyeing various synthetic fibers and fabrics open, non-dispersive use.	(G) Alkyl ester, 2-({4-[2-(trisubstituted phenyl)azo]-5-acetamido-2-substitutedphenyl}(substituted alkoxy)amino).
P–16–0406	6/9/2016	9/7/2016	CBI	(G) Coating	(G) Functionalized polyimide.
P–16–0407	6/9/2016	9/7/2016	CBI	(G) Coating	(G) Functionalized polyamide.
P–16–0408	6/9/2016	9/7/2016	CBI	(G) A Colorant for dyeing various synthetic fibers and fabrics open non-dispersive use.	(G) 3-pyridinecarbonitrile, 1,2-dihydro-trisubstituted-5-[2-(disubstituted phenyl)azo]-2-oxo.
P–16–0409	6/15/2016	9/13/2016	CBI	(G) Chemical intermediate for the synthesis of another substance.	(G) Alkylphenol.
P–16–0410	6/14/2016	9/12/2016	CBI	(G) Automotive engine fluid additive.	(G) Silicophosphonate—sodium silicate.
P–16–0411	6/13/2016	9/11/2016	CBI	(G) Crosslinking agent	(G) Substituted polyalkylene polycarbomonocyclic ester, polymer with polyalkylene glycol, alkoxyalkanol blocked.
P–16–0412	6/13/2016	9/11/2016	Cardolite Corporation	(G) Epoxy coating	(G) Cashew, nutshell liquid, polymer with amine and formaldehyde.
P–16–0413	6/13/2016	9/11/2016	Siltech Llc	(S) Anti-fingerprint material for a metal coating application.	(S) Siloxanes and silicones, di-me, 3-hydroxypropyl me, me 3,3,4,4,5,5,6,6,6-nonafluorohexyl.
P–16–0415	6/17/2016	9/15/2016	CBI	(G) Coating for oil and gas industry.	(G) Polyurethane.
P–16–0417	6/16/2016	9/14/2016	CBI	(G) Adhesive for open, non-descriptive use.	(G) Isocyanate terminated polyurethane resin.
P–16–0418	6/15/2016	9/13/2016	CBI	(G) A colorant for dyeing various synthetic fibers and fabrics open, non-dispersive use.	(G) 6-(disubstituted-phenyl azo)-4,7-disubstituted-quinolinepropanoic acid, alkyl ester.
P–16–0419	6/15/2016	9/13/2016	CBI	(G) Use as intermediate.	(G) *N*-alkyl-dialkylpiperidine.
P–16–0420	6/21/2016	9/19/2016	CBI	(S) The notified substance will be used as a fragrance ingredient being blended (mixed) with other fragrance ingredients to make fragrance oils that will be sold to industrial and commercial customers for their incorporation into soaps, detergents, cleaners and other similar household and consumer products.	(G) Dimethyl cyclohexenyl propanol.
P–16–0421	6/16/2016	9/14/2016	Guardian Industries Corp.	(S) Additive to facilitate melting of sand during manufacture of glass.	(S) Flue dust, glass manufacturing desulfurizationdefinition: The dust produced from the flue gas exhaust cleaning of a glass manufacturing process using carbonate containing substances. it consists primarily of na2so4, na2co3, and na4(so4)(co3).
P–16–0422	6/21/2016	9/19/2016	CBI	(G) Additive for polymers.	(S) 1,2-cyclohexanedicarboxylic acid, 1-(phenylmethyl) ester, ester with 2,2,4-trimethyl-1,3-pentanediol mono(2-methylpropanoate).
P–16–0423	6/17/2016	9/15/2016	CBI	(G) Intermediate	(G) Tetraalkylpiperidinium halide.
P–16–0424	6/17/2016	9/15/2016	CBI	(G) Directing agent	(G) Tetraalkylpiperidinium hydroxide.

TABLE 1—PMNS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016—Continued

Case No.	Received date	Projected notice end date	Manufacturer importer	Use	Chemical
P–16–0425	6/22/2016	9/20/2016	CBI	(G) A chemical reactant used in manufacturing a polymer.	(G) Amino-silane.
P–16–0428	6/20/2016	9/18/2016	Cardolite Corporation	(S) Industrial	(G) Phenol, formaldehyde and amine.
P–16–0429	6/20/2016	9/18/2016	CBI	(G) Universal tint paste resin having high solids.	(G) Endcapped polysiloxane.
P–16–0430	6/21/2016	9/19/2016	CBI	(G) Filler	(S) Pentanedioic acid, 2-methyl-.
P–16–0432	6/22/2016	9/20/2016	CBI	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P–16–0433	6/22/2016	9/20/2016	CBI	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P–16–0434	6/22/2016	9/20/2016	CBI	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P–16–0435	6/22/2016	9/20/2016	CBI	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P–16–0436	6/22/2016	9/20/2016	CBI	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P–16–0437	6/22/2016	9/20/2016	CBI	(S) Additive for flotation products used in ore processing.	(G) Fatty acid amidoamine acetates.
P–16–0441	6/23/2016	9/21/2016	CBI	(G) Oilfield additive	(G) Formaldehyde, reaction products with amine-alkylamine reaction products ether amine derivs. residues.
P–16–0446	6/24/2016	9/22/2016	Allnex USA Inc.	(S) Resin in architectural primer coatings.	(G) Fatty acids, reaction products with alkylamine, polymers with substituted carbomonocycle, substituted alkylamines, heteromonocycle and substituted alkanoate, lactates (salts).
P–16–0447	6/24/2016	9/22/2016	CBI	(G) Additive for coatings.	(G) Alkyl alkenoate, dialkyl alkanediyl, polymer with alkyl alkenoate, substituted carbomonocycle, alkyl alkenoate and heteromonocycle alkyl alkenoate, diazene bis alkyl heteromonocycle initiated.
P–16–0448	6/27/2016	9/25/2016	CBI	(G) Oil additive	(G) Metal salts branched alkyl substituted carbomonocycle with substituted alkyl carbomonocycle complexes.
P–16–0449	6/27/2016	9/25/2016	CBI	(S) Use per FFDCA cosmetics.	(S) 2,7-decadienal, (2e,7z)-.
P–16–0449	6/27/2016	9/25/2016	CBI	(S) Use per TSCA fragrance uses scented papers detergents candles etc.	(S) 2,7-decadienal, (2e,7z)-.
P–16–0453	6/29/2016	9/27/2016	Miwon North America, Inc..	(S) Resin for industrial coating.	(G) Polyester acrylate.
P–16–0454	6/30/2016	9/28/2016	CBI	(G) Material for highly dispersive use in consumer products.	(G) Trisubstituted alkenol.

For the 1 TME received by EPA during this period, Table 2 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE 2—TME RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016

Case No.	Received date	Projected notice end date	Manufacter importer	Use	Chemical
T–16–0017	5/25/2016	7/9/2016	CBI	(G) Wax	(G) Modified vegetable oil.

For the 23 NOCs received by EPA during this period, Table 3 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the NOC; the date the NOC was received by EPA; the projected date of commencement provided by the submitter in the NOC; and the chemical identity.

TABLE 3—NOCS RECEIVED FROM JUNE 1, 2016 TO JUNE 30, 2016

Case No.	Received date	Commencement date	Chemical
J–14–0001	6/7/2016	3/13/2014	(G) Saccharomyces cerevisiae, modified.
P–01–0309	6/17/2016	6/1/2016	(S) Undecanedioic acid, compd. with 2-(2-aminoethoxy)ethanol.
P–12–0121	6/23/2016	5/25/2016	(S) Acetic acid, 1, 1′-anhydride, reaction products with borax and hydrogen peroxide.
P–13–0930	6/13/2016	5/24/2016	(G) Substituted phenol.
P–14–0478	6/23/2016	4/8/2016	(S) Carbonic acid, dimethyl ester, polymer with 1,4-diisocyanatobenzene, 1,6-hexanediol and 1,5-pentanediol.
P–14–0860	6/9/2016	5/9/2016	(G) Benzophenonetetracarboxylic dianhydride-methylenediphenylene isocyanate-toluene diisocyanate copolymer.
P–15–0121	6/7/2016	6/2/2016	(S) Formaldehyde, polymer with 2-aminocyclopentanemethanamine, 1,4-butanediamine, 1,2-cyclohexanediamine, 1,6-hexanediamine, hexahydro-1h-azepine and 2-methyl-1,5,-pentanediamine.
P–15–0703	6/15/2016	5/28/2016	(S) 2-propenoic acid, 2-methyl-, 2-(diethylamino)ethyl ester, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate, compd. with methyl 4-methylbenzenesulfonate.
P–16–0022	6/3/2016	6/3/2016	(S) C_{10}-C_{20} neo fatty acids.
P–16–0101	6/9/2016	6/8/2016	(G) Disubstituted benzene alkanal.
P–16–0159	6/9/2016	3/31/2016	(G) Substituted polyaromatic sodium dicarboxylate.
P–16–0173	6/23/2016	6/6/2016	(G) Aminoalkyl alaninate sodium salt (1:1), polymer with alkyldiol, dialkyl-alkanediol, alkyldioic acid, alkyldiol, polyol, cycloaliphatic diisocyanate, polyalkylene glycol mono-alkyl ether-blocked.
P–16–0200	6/14/2016	6/7/2016	(S) 1-propanone, 1-[1,1′-biphenyl]-4-yl-2-methyl-2-(4-morpholinyl)-
P–16–0201	6/6/2016	5/22/2016	(S) Oxirane, 2-methyl-, polymer with alpha-hydro-omega-hydroxy- poly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethyl cyclohexane, oxirane and 2-[[3-(triethoxysilyl)propoxy]methyl]oxirane, poly ethylenepolypropylene glycol mono-bu ether monoether with propylene oxide-2-[[3-(tri ethoxysilyl)propoxy]methyl] oxirane polymer- and polypropylene glycol mono-bu ether-blocked.
P–16–0203	6/2/2016	5/22/2016	(G) Pentanedioic acid, compd. with polyalkylpolyamine.
P–16–0208	6/6/2016	5/23/2016	(S) Carbon, calcination products with sulfur.
P–16–0222	6/27/2016	6/26/2016	(G) Alkanedioic acid, polymer with substituted heteromonocycle, â±-hydro-ã¿â-hydroxypoly(oxy-1,2-ethanediyl) ether with substituted alkanediol and substituted. bis[carbomonocycle], alkanoate.
P–16–0223	6/10/2016	6/2/2016	(G) Wax.
P–16–0227	6/10/2016	6/8/2016	(G) Cashew nutshell liquid, polymer with diisocyanatoalkane, substituted-polyoxyalkyldiol, hydroxy-terminated .polybutadiene and 4,4′-(1-methylethylidene)bis[2-(2-propen-1-yl)phenol].
P–16–0228	6/21/2016	6/6/2016	(G) Derivative of a glycerol, alkanoic acid and mixed fatty acids polymer.
P–16–0235	6/6/2016	5/31/2016	(G) Polymeric methylene diphenyldiisocyanate, polymer with oxyalkyl diol, methacrylate blocked.
P–16–0250	6/24/2016	6/24/2016	(G) Substituted carbomonocycle, polymer with substituted alkanediol, alkanedioic acid, alkanediol, substituted alkanoic acid and substituted carbomonocycle, compd. with substituted alkane.
P–16–0267	6/22/2016	6/19/2016	(G) Fatty acids, reaction products with alkylamine, polymers with substituted carbomonocycle, substituted alkylamines, heteromonocycle and substituted alkanoate, lactates (salts).

Authority: 15 U.S.C. 2601 *et seq.*

Dated: July 25, 2016.

Megan Carroll,

Acting Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2016–18015 Filed 7–28–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9028–3]

Environmental Impact Statements; Notice of Availability

Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)

Filed 07/18/2016 Through 07/22/2016

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20160172, Final Supplement, USN, AK, Gulf of Alaska Navy Training Activities, Review Period Ends: 08/29/2016, Contact: Amy Burt 360–396–0403

EIS No. 20160173, Final, BLM, AK, Eastern Interior Proposed Resource Management Plan, Review Period

Ends: 08/29/2016, Contact: Jeanie Cole 907–474–2340

EIS No. 20160174, Draft Supplement, FHWA, WV, US 340 Improvement Study, Comment Period Ends: 09/30/2016, Contact: Jason Workman 304–347–5928

EIS No. 20160175, Draft, FERC, PA, PennEast Pipeline Project, Comment Period Ends: 09/12/2016, Contact: Medha Kochhar 202–502–8964

EIS No. 20160176, Draft, USACE, NY, Fire Island Inlet to Montauk Point, New York Combined Beach Erosion Control and Hurricane Protection Project, Comment Period Ends: 09/29/2016, Contact: Robert Smith 917–790–8729

Amended Notices

EIS No. 20160118, Draft, BLM, CO, Uncompahgre Draft Resource Management Plan, Comment Period Ends: 11/01/2016, Contact: Gina Jones 970–240–5381; Revision to FR Notice Published 06/03/2016; Extending Comment Period from 09/01/2016 to 11/01/2016

EIS No. 20160152, Draft, USFS, NM, Santa Fe National Forest Geothermal Leasing, Comment Period Ends: 10/28/2016, Contact: Larry Gore 575–289–3264; Revision to FR Notice Published 07/08/2016; Change Comment Period from 08/22/2016 to 10/28/2016

Dated: July 26, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–18021 Filed 7–28–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2016–0332; FRL9949–87–OW]

Request for Scientific Views: Draft Aquatic Life Ambient Estuarine/Marine Water Quality Criteria for Copper—2016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of EPA's *Draft Aquatic Life Ambient Estuarine/Marine Water Quality Criteria for Copper—2016* for public comment. EPA's Clean Water Act section 304(a)(1) draft recommended water quality criteria incorporate a recently-developed saltwater biotic ligand model (BLM) and the latest scientific information for estuarine/marine aquatic organisms. The updated recommended criteria will be particularly beneficial in the adoption of water quality standards for the protection of aquatic life in and around coastal harbors and marinas, where antifouling paints and coatings on vessels and marine structures represent one of the most commonly identified sources of copper to the estuarine/marine environment.

Following closure of this 60-day public comment period, EPA will consider the comments, revise the document, as appropriate, and then publish a final document that will provide recommendations for states and authorized tribes to establish water quality standards under the Clean Water Act (CWA).

DATES: Comments must be received on or before September 27, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2016–0332, to the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Mike Elias, Health and Ecological Criteria Division, Office of Water, (Mail Code 4304T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: (202) 566–0120; email: *elias.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

1. *Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For additional information about EPA's public docket, visit EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

II. What are EPA's recommended water quality criteria?

EPA's recommended water quality criteria are scientifically derived numeric values that protect aquatic life or human health from the deleterious effects of pollutants in ambient water. Section 304(a)(1) of the Clean Water Act (CWA) directs EPA to develop and publish and, from time to time, revise criteria for protection of aquatic life and human health that accurately reflect the latest scientific knowledge. Water quality criteria developed under section 304(a)(1) are based solely on data and the latest scientific knowledge on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a)(1) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting pollutant concentrations in ambient water.

EPA's recommended section 304(a)(1) criteria provide technical information to states and authorized tribes in adopting water quality standards (WQS) that ultimately provide a basis for assessing water body health and controlling discharges of pollutants. Under the CWA and its implementing regulations, states and authorized tribes are to adopt water quality criteria to protect designated uses (*e.g.*, public water supply, aquatic life, recreational use, or industrial use). EPA's recommended water quality criteria do not substitute for the CWA or regulations, nor are they regulations themselves. EPA's recommended criteria do not impose legally binding requirements. States and authorized tribes have the discretion to adopt, where appropriate, other scientifically defensible water quality criteria that differ from these recommendations.

III. What is estuarine/marine copper and why is EPA concerned about it?

Copper is an abundant trace element that occurs naturally in the earth's crust and surface waters. It is a nutrient that is essential to aquatic organisms at low concentrations, but is toxic to aquatic organisms at higher concentrations. In addition to acute effects such as mortality, chronic exposure to copper can lead to adverse effects on survival, growth, reproduction as well as alterations of brain function, enzyme activity, blood chemistry, and metabolism in aquatic organisms. Copper is commonly found in aquatic systems as a result of both natural and anthropogenic sources. Natural sources of copper in aquatic systems include geological deposits, volcanic activity, and weathering and erosion of rocks and soils. Anthropogenic sources of copper include mining activities, agriculture, metal and electrical manufacturing, sludge from publicly-owned treatment works (POTWs), pesticide use and more. A major source of copper in the marine environment is antifouling paints, used as coatings for ship hulls, buoys, and underwater surfaces, and as a legacy contaminant from decking, pilings and some marine structures that used chromated copper arsenate (CCA) treated timbers.

IV. Information on the Draft Document

The 2016 draft recommended update uses the saltwater biotic ligand model (BLM), a bioavailability model that relies on water quality input parameters, to estimate copper criteria protective of aquatic life in estuarine/marine environments. The BLM allows users to determine criteria values based on site-specific water quality variables (temperature, pH, dissolved organic carbon, and salinity) that influence the bioavailability and toxicity of copper in estuarine/marine environments. EPA has included new acute toxicity data for estuarine/marine species in the 2016 draft recommended update. EPA used a total of 74 genera to derive the estuarine/marine criterion maximum concentration (CMC) in the 2016 update compared to the 44 genera EPA used in EPA's 2003 draft estuarine/marine criteria for copper. Incorporation of the BLM accounts for copper bioavailability in natural aquatic systems, in contrast to the 2003 draft criteria which did not account for the interactions of these parameters on copper bioavailability and their effect on copper toxicity.

V. Solicitation of Scientific Views

EPA is soliciting additional scientific views, data, and information regarding the science and technical approach used in the derivation of the draft document.

Dated: July 15, 2016.

Joel Beauvais,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2016–18014 Filed 7–28–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0192]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 29, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0192.

Title: Section 87.103, Posting Station License.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents and Responses: 33,622 respondents, 33,622 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 303.

Total Annual Burden: 8,406 hours.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Section 87.103 states the following: (a) Stations at fixed locations. The license or a photocopy must be posted or retained in the station's permanent records. (b) Aircraft radio stations. The license must be either posted in the aircraft or kept with the aircraft registration certificate. If a single authorization covers a fleet of aircraft, a copy of the license must be either posted in each aircraft or kept with each aircraft registration certificate. (c) Aeronautical mobile stations. The license must be retained as a permanent part of the station records.

The recordkeeping requirement contained in Section 87.103 is necessary to demonstrate that all transmitters in the Aviation Service are properly licensed in accordance with the requirements of Section 301 of the Communications Act of 1934, as amended, 47 U.S.C. 301, No. 2020 of the International Radio Regulation, and Article 30 of the Convention on International Civil Aviation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–17901 Filed 7–28–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10053, CMS–10302 and CMS–10468]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by August 29, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Paid Feeding Assistants in Long-Term Care Facilities and Supporting Regulations; *Use:* In accordance with 42 CFR part 483, long-term care facilities are permitted to use paid feeding assistants to supplement the services of certified nurse aides. If facilities choose this option, feeding assistants must complete a training program. Nursing home providers are expected to maintain a record of all individuals used by the facility as paid feeding assistants. *Form Number:* CMS–10053 (OMB control number: 0938–0916); *Frequency:* Occasionally; *Affected Public:* Private Sector—Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 4,250; *Total Annual Responses:* 4,250; *Total Annual Hours:* 25,500. (For policy questions regarding this collection contact Karen Tritz at 410–786–8021.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection Requirements for Compendia for Determination of Medically-accepted Indications for Off-label Uses of Drugs and Biologicals in an Anti-cancer Chemotherapeutic Regimen *Use:* Section 182(b) of the Medicare Improvement of Patients and Providers Act (MIPPA) amended section 1861(t)(2)(B) of the Social Security Act (42 U.S.C. 1395x(t)(2)(B)) by adding at the end the following new sentence: 'On and after January 1, 2010, no compendia may be included on the list of compendia under this subparagraph unless the compendia has a publicly transparent process for evaluating therapies and for identifying potential conflicts of interest.' We believe that the implementation of this statutory provision that compendia have a "publicly transparent process for evaluating therapies and for identifying potential conflicts of interests" is best accomplished by amending 42 CFR 414.930 to include the MIPPA requirements and by defining the key components of publicly transparent processes for evaluating therapies and for identifying potential conflicts of interests.

All currently listed compendia will be required to comply with these provisions, as of January 1, 2010, to remain on the list of recognized compendia. In addition, any compendium that is the subject of a future request for inclusion on the list of recognized compendia will be required to comply with these provisions. No compendium can be on the list if it does not fully meet the standard described in section 1861(t)(2)(B) of the Act, as revised by section 182(b) of the MIPPA. *Form Number:* CMS–10302 (OMB control number: 0938–1078); *Frequency:* Annually; *Affected Public:* Business and other for-profits and Not-for-profit institutions; *Number of Respondents:* 845; *Total Annual Responses:* 900; *Total Annual Hours:* 5,135. (For policy questions regarding this collection contact Cheryl Gilbreath at 410–786–5919.)

3. *Type of Information Collection Request:* Extension of a previously approved collection; *Title of Information Collection:* Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment; *Use:* The Patient Protection and Affordable Care Act, Public Law 111–148, enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111–152, expands access to health insurance for individuals and employees of small businesses through the establishment of new Affordable Insurance Exchanges (Exchanges), including the Small Business Health Options Program (SHOP). The Exchanges, which became operational on January 1, 2014, enhanced competition in the health insurance market, expanded access to affordable health insurance for millions of Americans, and provided consumers with a place to easily compare and shop for health insurance coverage. The reporting requirements and data collection in Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment (CMS–2334–F) address: (1) Standards related to notices, (2) procedures for the verification of enrollment in an eligible employer-sponsored plan and eligibility for qualifying coverage in an eligible employer-sponsored plan; and (3) other eligibility and enrollment provisions to provide detail necessary for state implementation. *Form Number:* CMS–10468 (OMB control number: 0938–1207); *Frequency:* Annually; *Affected Public:* Individuals, Households and Private Sector; *Number of Respondents:* 13,200; *Total Annual Responses:* 13,200; *Total Annual Hours:* 8,899. (For policy questions regarding this collection contact Sarah Boehm at 301–492–4429.)

Dated: July 26, 2016.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–17988 Filed 7–28–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10311, CMS–10242]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by September 27, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ______, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10311 Medicare Program/Home Health Prospective Payment System Rate Update for Calendar Year 2010: Physician Narrative Requirement and Supporting Regulation

CMS–10242 Documentation Requirements Concerning Emergency and Nonemergency Ambulance Transports Described in the Beneficiary Signature Regulations in 42 CFR 424.36(b)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Program/Home Health Prospective Payment System Rate Update for Calendar Year 2010: Physician Narrative Requirement and Supporting Regulation; *Use:* Section (o) of the Act (42 U.S.C. 1395 x) specifies certain requirements that a home health agency must meet to participate in the Medicare program. To qualify for Medicare coverage of home health services a Medicare beneficiary must meet each of the following requirements as stipulated in § 409.42: Be confined to the home or an institution that is not a hospital, SNF, or nursing facility as defined in sections 1861(e)(1), 1819(a)(1) or 1919 of Act; be under the care of a physician as described in § 409.42(b); be under a plan of care that meets the requirements specified in § 409.43; the care must be furnished by or under arrangements made by a participating HHA, and the beneficiary must be in need of skilled services as described in § 409.42(c). Subsection 409.42(c) of our regulations requires that the beneficiary need at least one of the following services as certified by a physician in accordance with § 424.22: Intermittent skilled nursing services and the need for skilled services which meet the criteria in § 409.32; Physical therapy which meets the requirements of § 409.44(c), Speech-language pathology which meets the requirements of § 409.44(c); or have a continuing need for occupational therapy that meets the requirements of § 409.44(c), subject to the limitations described in § 409.42(c)(4). On March 23, 2010, the Affordable Care Act of 2010 (Pub. L., 111–148) was enacted. Section 6407(a) (amended by section 10605) of the Affordable Care Act amends the requirements for physician certification of home health services contained in Sections 1814(a)(2)(C) and 1835(a)(2)(A) by requiring that, prior to certifying a patient as eligible for Medicare's home health benefit, the physician must document that the physician himself or herself or a permitted non-physician practitioner has had a face-to-face encounter (including through the use of tele-health services, subject to the requirements in section 1834(m) of the Act)'', with the patient. The Affordable Care Act provision does not amend the statutory requirement that a physician must certify a patient's eligibility for Medicare's home health benefit, (see Sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act. *Form Number:* CMS–10311 (OMB control number: 0938–1083); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other For-profits); *Number of Respondents:* 345,600; *Total Annual Responses:* 345,600; *Total Annual Hours:* 28,800. (For policy questions regarding this collection contact Hillary Loeffler at 410–786–0456.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Documentation Requirements Concerning Emergency and Nonemergency Ambulance Transports Described in the Beneficiary Signature Regulations in 42 CFR 424.36(b); *Use:* The statutory authority requiring a beneficiary's signature on a claim submitted by a provider is located in section 1835(a) and in 1814(a) of the Social Security Act (the Act), for Part B and Part A services, respectively. The authority requiring a beneficiary's signature for supplier claims is implicit in sections 1842(b)(3)(B)(ii) and in 1848(g)(4) of the Act. Federal regulations at 42 CFR 424.32(a)(3) state that all claims must be signed by the beneficiary or on behalf of the beneficiary (in accordance with 424.36). Section 424.36(a) states that the beneficiary's signature is required on a claim unless the beneficiary has died or the provisions of 424.36(b), (c), or (d) apply. We believe that for emergency and nonemergency ambulance transport services, where the beneficiary is physically or mentally incapable of signing the claim (and the beneficiary's authorized representative is unavailable or unwilling to sign the claim), that it is impractical and infeasible to require an ambulance provider or supplier to later locate the beneficiary or the person authorized to sign on behalf of the beneficiary, before submitting the claim to Medicare for payment. Therefore, we created an exception to the beneficiary signature requirement with respect to emergency and nonemergency ambulance transport services, where the beneficiary is physically or mentally incapable of signing the claim, and if certain documentation requirements are met. Thus, we added subsection (6) to paragraph (b) of 42 CFR 424.36. The information required in this ICR is needed to help ensure that services were in fact rendered and were rendered as billed. *Form Number:* CMS–10242 (OMB control number: 0938–1049); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other For-profits, Not-For-Profit Institutions); *Number of Respondents:* 10,402; *Total Annual Responses:* 14,155,617; *Total Annual Hours:* 1,180,578. (For policy questions regarding this collection contact Martha Kuespert at 410–786–4605.)

Dated: July 26, 2016.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–17987 Filed 7–28–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1773]

Change of Address for the Food and Drug Administration Center for Food Safety and Applied Nutrition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is providing notice that the street address for the Center for Food Safety and Applied Nutrition's (CFSAN's) Harvey W. Wiley Federal Building in College Park, MD has changed. The new street address is 5001 Campus Drive.

FOR FURTHER INFORMATION CONTACT: John Reilly, Center for Food Safety and Applied Nutrition (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public that the street address for CFSAN's Harvey W. Wiley Federal Building in College Park, MD has changed. The street, formerly known as Paint Branch Parkway, has been renamed ''Campus Drive'' and the street number has been changed to ''5001.'' Thus, the building's street address has changed from 5100 Paint Branch Parkway to 5001 Campus Drive, and our full address is: Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Drive, College Park, MD 20740.

Consequently, any mailed correspondence addressed to CFSAN's Harvey W. Wiley Federal Building should use the new street address beginning immediately.

Dated: July 21, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17659 Filed 7–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0007]

Medical Device User Fee Rates for Fiscal Year 2017

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2017. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device User Fee Amendments of 2012 (MDUFA III), authorizes FDA to collect user fees for certain medical device submissions and annual fees both for certain periodic reports and for establishments subject to registration. This notice establishes the fee rates for FY 2017, which apply from October 1, 2016, through September 30, 2017. To avoid delay in the review of your application, you should pay the application fee before or at the time you submit your application to FDA. The fee you must pay is the fee that is in effect on the later of the date that your application is received by FDA or the date your fee payment is recognized by the U.S. Treasury. If you want to pay a reduced small business fee, you must qualify as a small business before making your submission to FDA; if you do not qualify as a small business before making your submission to FDA, you will have to pay the higher standard fee. Please note that the establishment registration fee is not eligible for a reduced small business fee. As a result, if the establishment registration fee is the only medical device user fee that you will pay in FY 2017, you should not submit a FY 2017 Small Business Qualification and Certification request. This document provides information on how the fees for FY 2017 were determined, the payment procedures you should follow, and how you may qualify for reduced small business fees.

FOR FURTHER INFORMATION CONTACT:

For information on Medical Device User Fees: Visit FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/MedicalDeviceUserFee/ucm20081521.htm.*

For questions relating to this notice: Maurille Beheton, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd. (COLE–14202C), Silver Spring, MD 20993–0002, 301–796–4689.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the FD&C Act (21 U.S.C. 379j) establishes fees for certain medical device applications, submissions, supplements, and notices (for simplicity, this document refers to these collectively as "submissions" or "applications"); for periodic reporting on class III devices; and for the registration of certain establishments. Under statutorily defined conditions, a qualified applicant may receive a fee waiver or may pay a lower small business fee (see 21 U.S.C. 379j(d) and (e)). Additionally, the Secretary of Health and Human Services (the Secretary) may, at the Secretary's sole discretion, grant a fee waiver or reduction if the Secretary finds that such waiver or reduction is in the interest of public health (see 21 U.S.C. 379j(f)).

Under the FD&C Act, the fee rate for each type of submission is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol (PDP), or a biologics license application (BLA)). The FD&C Act specifies the base fee for a premarket application for each year from FY 2013 through FY 2017; the base fee for a premarket application received by FDA during FY 2017 is $268,443. From this starting point, this document establishes FY 2017 fee rates for other types of submissions, and for periodic reporting, by applying criteria specified in the FD&C Act.

The FD&C Act specifies the base fee for establishment registration for each year from FY 2013 through FY 2017; the base fee for an establishment registration in FY 2017 is $3,872. There is no reduction in the registration fee for small businesses. Each establishment that is registered (or is required to register) with the Secretary under section 510 of the FD&C Act (21 U.S.C. 360) because such establishment is engaged in the manufacture, preparation, propagation, compounding, or processing of a device is required to pay the annual fee for establishment registration.

II. Revenue Amount for FY 2017

The total revenue amount for FY 2017 is $130,184,348, as set forth in the statute prior to the inflation adjustment and offset of excess collections (see 21 U.S.C. 379j(b)(3)). MDUFA directs FDA to use the yearly total revenue amount as a starting point to set the standard fee rates for each fee type. The fee calculations for FY 2017 are described in this document.

A. Inflation Adjustment

MDUFA specifies that the $130,184,348 is to be adjusted for inflation increases for FY 2017 using two separate adjustments—one for payroll costs and one for non-pay cost (see 21 U.S.C. 379j(c)(2)). The base inflation adjustment for FY 2017 is the sum of one plus these two separate adjustments, and is compounded as specified (see 21 U.S.C. 379j(c)(2)(C)(1) and 379j(c)(2)(B)(ii)).

The component of the inflation adjustment for payroll costs is the average annual percent change in the cost of all personnel compensation and benefits (PC&B) paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding FYs, multiplied by 0.60, or 60 percent (see 21 U.S.C. 379j(c)(2)(C)).

Table 1 summarizes the actual cost and FTE data for the specified FYs, and provides the percent change from the previous FY and the average percent change over the first 3 of the 4 FYs preceding FY 2017. The 3-year average is 1.8759 percent (rounded).

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE

Fiscal Year	2013	2014	2015	3-Year average
Total PC&B	$1,927,703,000	$2,054,937,000	$2,232,304,000	
Total FTE	13,974	14,555	15,484	
PC&B per FTE	$137,949	$141,184	$144,168	
Percent change from previous year	1.1690%	2.3451%	2.1136%	1.8759%

The payroll adjustment is 1.8759 percent multiplied by 60 percent, or 1.1255 percent.

The statute specifies that the component of the inflation adjustment for non-payroll costs for FY 2017 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC–MD–VA–WV; not seasonally adjusted; all items; annual index) for the first 3 of the preceding 4 years of available data multiplied by 0.40, or 40 percent (see 21 U.S.C. 379j(c)(2)(C)).

Table 2 provides the summary data and the 3-year average percent change in the specified CPI for the Baltimore-Washington area. This data is published by the Bureau of Labor Statistics and can be found on their Web site at *http://data.bls.gov/cgi-bin/surveymost?cu* by checking the box marked "Washington-Baltimore All Items, November 1996=100—CUURA311SA0" and then clicking on the "Retrieve Data" button.

TABLE 2—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN BALTIMORE-WASHINGTON AREA CPI

Fiscal year	2013	2014	2015	3-Year average
Annual CPI	152.500	154.847	155.353	
Annual Percent Change	1.5232%	1.5390%	0.3268%	
3-Year Avg. Percent Change in CPI				1.1297%

The non-pay adjustment is 1.1297 percent multiplied by 40 percent, or 0.4519 percent.

Next, the payroll adjustment (1.1255 percent or 0.011255) is added to the non-pay adjustment (0.4519 percent or 0.004519), for a total of 1.5774 percent (or 0.015774). To complete the inflation adjustment, 1 (100 percent or 1.0) is added for a total base inflation adjustment of 1.015774 for FY 2017.

MDUFA III provides for this inflation adjustment to be compounded for FY 2015 and each subsequent fiscal year (see 21 U.S.C. 379j(c)(2)(B)(ii)). The base inflation adjustment for FY 2017 (1.015774) is compounded by multiplying it by the compounded applicable inflation adjustment for FY 2016 (1.064457), as published in the **Federal Register** of August 3, 2015 (80 FR 46033 to 46039), to reach the applicable inflation adjustment of 1.081248 (rounded) (1.015774 times 1.064457) for FY 2017. We then multiply the total revenue amount for FY 2017 ($130,184,348) by 1.081248, yielding an inflation adjusted total revenue amount of $140,762,000 (rounded to the nearest thousand dollars).

B. Offset for Excess Collections Through FY 2016

Under the offset provision of the FD&C Act (see section 738(i)(4) (21 U.S.C. 379j(i)(4))), if the cumulative amount of fees collected during FY 2013 through FY 2015, added to the amount estimated to be collected for FY 2016, exceeds the cumulative amount appropriated for these four FYs, the excess shall be credited to the appropriation account of the Food and Drug Administration and shall be subtracted from the amount of fees that would otherwise be authorized to be collected for FY 2017. Table 3 presents the amount of MDUFA fees collected during FY 2013 through FY 2015 (actuals), and the amount estimated to be collected for FY 2016, and compares those amounts with the fees specified to be appropriated in these four FYs.

TABLE 3—STATEMENT OF FEES APPROPRIATED, FEES COLLECTED, AND DIFFERENCES AS OF JUNE 30, 2016

Fiscal year	Fee appropriated	Fees collected	Difference
2013 Actual	$97,722,000	$103,991,182	$6,269,182
2014 Actual	114,833,000	124,297,628	9,464,628
2015 Actual	128,282,000	139,712,238	11,430,238
2016 Estimate	134,667,000	134,667,000	0
Total	478,504,000	505,668,048	27,164,048
Unearned Revenue Included in Above Amount			12,485,897
Excess Collections Less Unearned Revenue (Offset Amount)			14,678,151

The total amount FDA expects to have collected in excess of appropriations by the end of FY 2016 is $27,164,048. However, of that amount, a total of $12,485,897 represents unearned revenue—primarily fees paid for applications that have not yet been received. The unearned revenue is held in reserve either to refund, if no application is submitted, or to apply toward the future FY when the application is received. The net of these two figures, $14,678,151, is the amount that FDA has received in excess of appropriations that is available for obligation, and the amount by which fee revenue will be offset in FY 2017.

For FY 2017, the statute authorizes $140,762,000 in user fees. In order to determine the revised collection amount, we deduct the net excess collection amount of $14,678,151 from $140,762,000, and the revised revenue target for FY 2017 becomes $126,083,000 (rounded down to the nearest thousand dollars).

III. Fees for FY 2017

Under the FD&C Act, all submission fees and the periodic reporting fee are set as a percent of the standard (full) fee for a premarket application (see 21 U.S.C. 379j(a)(2)(A)). Table 4 provides the last 3 years of fee paying submission counts and the 3-year average. These numbers are used to project the fee paying submission counts that FDA will receive in FY 2017. Most of the fee paying submission counts are published in the MDUFA Financial Report to Congress each year.

TABLE 4—3-YEAR AVERAGE OF FEE PAYING SUBMISSIONS

Application type	FY 2013 actual	FY 2014 actual	FY 2015 actual	3-Year average
Full Fee Applications	23	25	42	30
Small Business	9	5	7	7
Panel-Track Supplement	19	12	22	18
Small Business	0	3	3	2
180-Day Supplements	128	122	143	131
Small Business	21	24	15	20
Real-Time Supplements	182	192	204	193
Small Business	23	19	28	23
510(k)s	3,149	3,034	2,768	2,984
Small Business	1,202	1,037	1,037	1,092
30-Day Notice	956	934	920	937
Small Business	69	91	71	77
513(g) (21 U.S.C. 360c(g)) Request for Classification Information	65	69	75	70
Small Business	38	31	33	34
Annual Fee for Periodic Reporting [1]	614	514	544	557
Small Business [1]	54	56	68	59
Establishment Registration [2]	23,477	24,026	25,363	24,289

[1] Includes collection of quarter 4 billing for FY 2015 during FY 2016.

[2] Establishment Registration total comes from the registration system and will vary from the financial report.

The information in table 4 is necessary to estimate the amount of revenue that will be collected based on the fee amounts. Table 5 displays both the estimated revenue using the FY 2017 base fees set in statute and the estimated revenue after the inflation adjustment and offset of excess collections to the FY 2017 base fees. Using the fees set in statute and the 3 year averages of fee paying submissions, the collections would total $144,335,998, which is $18,252,998 higher than the statutory revenue limit. Accordingly the PMA and establishment fee need to be decreased so that collections come as close to the statutory revenue limit of $126,083,000 as possible without exceeding the limit. This is done by calculating the percentage difference between the statutory revenue limit and the estimated resulting 2017 revenue collections, and then lowering the fees proportionally by that percentage (rounded to the nearest dollar). The fees in the second column from the right are those we are establishing in FY 2017, which are the standard fees.

TABLE 5—FEES NEEDED TO ACHIEVE NEW FY 2017 REVENUE TARGET

Application type	FY 2017 Statutory fees (base fees)	Estimated resulting 2017 revenue	Adjusted FY 2017 fees to meet revenue target (standard fees)	FY 2017 Revenue from adjusted fees
Full Fee Applications	$268,443	$8,053,290	$234,495	$7,034,850
Small Business	67,111	469,777	58,624	410,368
Panel-Track Supplement	201,332	3,623,976	175,871	3,165,678
Small Business	50,333	100,666	43,968	87,936
180-Day Supplements	40,266	5,274,846	35,174	4,607,794
Small Business	10,067	201,340	8,794	175,880
Real-Time Supplements	18,791	3,626,663	16,415	3,168,095
Small Business	4,698	108,054	4,104	94,392
510(k)s	5,369	16,021,096	4,690	13,994,960
Small Business	2,685	2,932,020	2,345	2,560,740
30-Day Notice	4,295	4,024,415	3,752	3,515,624
Small Business	2,148	165,396	1,876	144,452
513(g) Request for Classification Information	3,624	253,680	3,166	221,620
Small Business	1,812	61,608	1,583	53,822
Annual Fee for Periodic Reporting	9,396	5,233,572	8,207	4,571,299
Small Business	2,349	138,591	2,052	121,068
Establishment Registration	3,872	94,047,008	3,382	82,145,398
Total		144,335,998		126,073,976

The standard fee (adjusted base amount) for a premarket application, including a BLA, and for a premarket report and a BLA efficacy supplement, is $234,495 for FY 2017. The fees set by reference to the standard fee for a premarket application are:

- For a panel-track supplement, 75 percent of the standard fee;
- For a 180-day supplement, 15 percent of the standard fee;
- For a real-time supplement, 7 percent of the standard fee;
- For a 510(k) premarket notification, 2 percent of the standard fee;
- For a 30-day notice, 1.6 percent of the standard fee;

- For a 513(g) request for classification information, 1.35 percent of the standard fee; and
- For an annual fee for periodic reporting concerning a class III device, 3.5 percent of the standard fee.

For all submissions other than a 510(k) premarket notification, a 30-day notice, and a 513(g) request for classification information, the small business fee is 25 percent of the standard (full) fee for the submission (see 21 U.S.C. 379j(d)(2)(C)). For a 510(k) premarket notification submission, a 30-day notice, and a 513(g) request for classification information, the small business fee is 50 percent of the standard (full) fee for the submission (see 21 U.S.C. 379j(d)(2)(C) and (e)(2)(C)).

The annual fee for establishment registration, after adjustment, is set at $3,382 for FY 2017. There is no small business rate for the annual establishment registration fee; all establishments pay the same fee.

Table 6 summarizes the FY 2017 rates for all medical device fees.

TABLE 6—MEDICAL DEVICE FEES FOR FY 2017

Application fee type	Standard fee (as a percent of the standard fee for a premarket application)	FY 2017 Standard fee	FY 2017 Small business fee
Premarket application (a PMA submitted under section 515(c)(1) of the FD&C Act (21 U.S.C. 360e(c)(1)), a PDP submitted under section 515(f) of the FD&C Act, or a BLA submitted under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262)).	Base fee specified in statute at $268,443, but multiplied by 87.3538 percent.	$234,495	$58,624
Premarket report (submitted under section 515(c)(2) of the FD&C Act)	100	234,495	58,624
Efficacy supplement (to an approved BLA under section 351 of the PHS Act).	100	234,495	58,624
Panel-track supplement	75	175,871	43,968
180-day supplement	15	35,174	8,794
Real-time supplement	7	16,415	4,104
510(k) premarket notification submission	2	4,690	2,345
30-day notice	1.60	3,752	1,876
513(g) request for classification information	1.35	3,166	1,583
Annual Fee Type:			
Annual fee for periodic reporting on a class III device	3.50	8,207	2,052
Annual establishment registration fee (to be paid by the establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a device, as defined by 21 U.S.C. 379i(13)).	Base fee specified in statute at $3,872, but multiplied by 87.3538 percent.	3,382	3,382

IV. How To Qualify as a Small Business for Purposes of Medical Device Fees

If your business has gross receipts or sales of no more than $100 million for the most recent tax year, you may qualify for reduced small business fees. If your business has gross sales or receipts of no more than $30 million, you may also qualify for a waiver of the fee for your first premarket application (PMA, PDP, or BLA) or premarket report. You must include the gross receipts or sales of all of your affiliates along with your own gross receipts or sales when determining whether you meet the $100 million or $30 million threshold. If you want to pay the small business fee rate for a submission, or you want to receive a waiver of the fee for your first premarket application or premarket report, you should submit the materials showing you qualify as a small business 60 days before you send your submission to FDA. FDA will review your information and determine whether you qualify as a small business eligible for the reduced fee and/or fee waiver. If you make a submission before FDA finds that you qualify as a small business, you must pay the standard (full) fee for that submission.

If your business qualified as a small business for FY 2016, your status as a small business will expire at the close of business on September 30, 2016. You must re-qualify for FY 2017 in order to pay small business fees during FY 2017.

If you are a domestic (U.S.) business, and wish to qualify as a small business for FY 2017, you must submit the following to FDA:

1. A completed FY 2017 MDUFA Small Business Qualification Certification (Form FDA 3602). This form is provided in FDA's guidance document, "FY 2017 Medical Device User Fee Small Business Qualification and Certification," available on FDA's Web site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.*

2. A certified copy of your Federal (U.S.) Income Tax Return for the most recent tax year. The most recent tax year will be 2016, except:

If you submit your FY 2017 MDUFA Small Business Qualification before April 15, 2017, and you have not yet filed your return for 2016, you may use tax year 2015.

If you submit your FY 2017 MDUFA Small Business Qualification on or after April 15, 2017, and have not yet filed your 2016 return because you obtained an extension, you may submit your most recent return filed prior to the extension.

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year, or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected. The applicant must also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each

affiliate, or that the applicant has no affiliates.

If you are a foreign business, and wish to qualify as a small business for FY 2017, you must submit the following:

1. A completed FY 2017 MDUFA Foreign Small Business Qualification Certification (Form FDA 3602A). This form is provided in FDA's guidance document, "FY 2017 Medical Device User Fee Small Business Qualification and Certification," available on FDA's Internet site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.*

2. A National Taxing Authority Certification, completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected.

3. For each of your affiliates, either:

- If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year (2016 or later), or
- If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates for the gross receipts or sales collected. The applicant must also submit a statement signed by the head of the applicant's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the applicant has no affiliates.

V. Procedures for Paying Application Fees

If your application or submission is subject to a fee and your payment is received by FDA between October 1, 2016, and September 30, 2017, you must pay the fee in effect for FY 2017. The later of the date that the application is received in the reviewing center's document room or the date the U.S. Treasury recognizes the payment determines whether the fee rates for FY 2016 or FY 2017 apply. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application subject to a fee to ensure that FDA links the fee with the correct application. (**Note:** Do not send your user fee check to FDA with the application.)

A. Secure a Payment Identification Number (PIN) and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment

Log into the User Fee System at: *https://userfees.fda.gov/OA_HTML/mdufmaCAcdLogin.jsp.* Complete the Medical Device User Fee cover sheet. Be sure you choose the correct application submission date range. (Two choices will be offered until October 1, 2016. One choice is for applications and fees that will be received on or before September 30, 2016, which are subject to FY 2016 fee rates. A second choice is for applications and fees received on or after October 1, 2016, which are subject to FY 2017 fee rates.) After completing data entry, print a copy of the Medical Device User Fee cover sheet and note the unique PIN located in the upper right-hand corner of the printed cover sheet.

B. Electronically Transmit a Copy of the Printed Cover Sheet With the PIN

When you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Applicants are required to set up a user account and password to assure data security in the creation and electronic submission of cover sheets.

C. Submit Payment for the Completed Medical Device User Fee Cover Sheet

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a Web-based payment system, for online electronic payment. You may make a payment via electronic check or credit card after submitting your cover sheet. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* Once you search for your invoice, click "Pay Now" to be redirected to Pay.gov. Note that electronic payment options are based on the balance due. Payment by credit card is available for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be drawn on U.S bank accounts as well as U.S. credit cards.

2. If paying with a paper check:

- All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. (If needed, FDA's tax identification number is 53–0196965.)
- Please write your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) on your check.
- Mail the paper check and a copy of the completed cover sheet to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier, the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery).

3. If paying with a wire transfer:

- Please include your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) in your wire transfer. Without the PIN, your payment may not be applied to your cover sheet and review of your application may be delayed.
- The originating financial institution may charge a wire transfer fee. Ask your financial institution about the fee and add it to your payment to ensure that your cover sheet is fully paid.

Use the following account information when sending a wire transfer: U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Road, 14th Floor, Silver Spring, MD 20993–0002.

FDA records the official application receipt date as the later of the following: (1) The date the application was received by FDA or (2) the date the U.S. Treasury recognizes the payment. It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA.

D. Submit Your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee cover sheet to one of the following addresses:

1. Medical device applications should be submitted to: Food and Drug Administration, Center for Devices and Radiological Health, Document Control Center, 10903 New Hampshire Ave., Building 66, Rm. 0609, Silver Spring, MD 20993–0002.
2. Biologics license applications and other medical device submissions reviewed by the Center for Biologics Evaluation and Research should be sent to: Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center, 10903 New Hampshire Ave, Building 71, Rm. G112, Silver Spring, MD 20993–0002.

VI. Procedures for Paying the Annual Fee for Periodic Reporting

You will be invoiced at the end of the quarter in which your PMA Periodic Report is due. Invoices will be sent based on the details included on your PMA file. You are responsible for ensuring FDA has your current billing information, and you may update your contact information for the PMA by submitting an amendment to the PMA.

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* Once you search for your invoice, click "Pay Now" to be redirected to Pay.gov. Note that electronic payment options are based on the balance due. Payment by credit card is available for balances less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be drawn on U.S bank accounts as well as U.S. credit cards.

2. If paying with a paper check:

All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. (If needed, FDA's tax identification number is 53–0196965.)

- Please write your invoice number on the check.
- Mail the paper check and a copy of invoice to: Food and Drug Administration, P.O. Box 979033, St. Louis, MO, 63197–9000.

(Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier, the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery).

3. If paying with a wire transfer:

- Please include your invoice number in your wire transfer. Without the invoice number, your payment may not be applied and you may be referred to collections.
- The originating financial institution may charge a wire transfer fee. Ask your financial institution about the fee and add it to your payment to ensure that your invoice is fully paid.

Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., 14th Floor, Silver Spring, MD 20993–0002.

VII. Procedures for Paying Annual Establishment Fees

To pay the annual establishment fee, firms must access the Device Facility User Fee (DFUF) Web site at *https://userfees.fda.gov/OA_HTML/furls.jsp.* (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site address after this document publishes in the **Federal Register**.) Create a DFUF order and you will be issued a PIN when you place your order. After payment has been processed, you will be issued a payment confirmation number (PCN). You will not be able to register your establishment if you do not have a PIN and a PCN. An establishment required to pay an annual establishment registration fee is not legally registered in FY 2017 until it has completed the steps below to register and pay any applicable fee. (See 21 U.S.C. 379j(g)(2).)

Companies that do not manufacture any product other than a licensed biologic are required to register in the Blood Establishment Registration (BER) system. FDA's Center for Biologics Evaluation and Research (CBER) will send establishment registration fee invoices annually to these companies.

A. Submit a DFUF Order With a PIN From FDA Before Registering or Submitting Payment

To submit a DFUF Order, you must create or have previously created a user account and password for the user fee Web site listed previously in this section. After creating a user name and password, log into the Establishment Registration User Fee FY 2016 store. Complete the DFUF order by entering the number of establishments you are registering that require payment. When you are satisfied that the information in the order is accurate, electronically transmit that data to FDA according to instructions on the screen. Print a copy of the final DFUF order and note the unique PIN located in the upper right-hand corner of the printed order.

B. Pay for Your DFUF Order

Unless paying by credit card, all payments must be in U. S. currency and drawn on a U.S. bank.

1. If paying by credit card or electronic check (ACH or eCheck):

The DFUF order will include payment information, including details on how you can pay online using a credit card or electronic check. Follow the instructions provided to make an electronic payment.

2. If paying with a paper check:

You may pay by a check, in U.S. dollars and drawn on a U.S. bank, mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. (**Note:** This address is different from the address for payments of application and annual report fees and is to be used only for payment of annual establishment registration fees.)

If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact the U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery).

Please make sure that both of the following are written on your check: (1) The FDA post office box number (P.O. Box 979108) and (2) the PIN that is printed on your order. Include a copy of your printed order when you mail your check.

3. If paying with a wire transfer:

Wire transfers may also be used to pay annual establishment fees. To send a wire transfer, please read and comply with the following information:

Include your order's unique PIN (in the upper right-hand corner of your completed DFUF order) in your wire transfer. Without the PIN, your payment may not be applied to your facility and your registration may be delayed.

The originating financial institution may charge a wire transfer fee. Ask your financial institution about the fee and add it to your payment to ensure that your order is fully paid. Use the following account information when sending a wire transfer: U.S. Dept. of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 8455 Colesville Rd., 14th Floor, Silver Spring, MD 20993–0002. (If needed, FDA's tax identification number is 53–0196965.)

C. Complete the Information Online To Update Your Establishment's Annual Registration for FY 2017, or To Register a New Establishment for FY 2017

Go to the Center for Devices and Radiological Health's Web site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/HowtoMarketYourDevice/RegistrationandListing/default.htm* and click the "Access Electronic Registration" link on the left side of the page. This opens up a new page with important information about the FDA Unified Registration and Listing System (FURLS). After reading this information, click on the "Access Electronic Registration" link in the middle of the page. This link takes you to an FDA Industry Systems page with tutorials that demonstrate how to create a new FURLS user account if your establishment did not create an account in FY 2016. Manufacturers of licensed biologics should register in the BER system at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/Establishment Registration/BloodEstablish mentRegistration/default.htm.*

Enter your existing account ID and password to log into FURLS. From the FURLS/FDA Industry Systems menu, click on the Device Registration and Listing Module (DRLM) of FURLS button. New establishments will need to register and existing establishments will update their annual registration using choices on the DRLM menu. When you choose to register or update your annual registration, the system will prompt you through the entry of information about your establishment and your devices. If you have any problems with this process, email: *reglist@cdrh.fda.gov* or call 301–796–7400 for assistance. (**Note:** This email address and this telephone number are for assistance with establishment registration only; they are not to be used for questions related to other aspects of medical device user fees.) Problems with BERS should be directed to *http://www.accessdata.fda.gov/scripts/email/cber/bldregcontact.cfm* or call 240–402–8360.

D. Enter Your DFUF Order PIN and PCN

After completing your annual or initial registration and device listing, you will be prompted to enter your DFUF order PIN and PCN, when applicable. This process does not apply to establishments engaged only in the manufacture, preparation, propagation, compounding, or processing of licensed biologic devices. CBER will send invoices for payment of the establishment registration fee to such establishments.

Dated: July 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17903 Filed 7–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1039]

General Wellness: Policy for Low Risk Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "General Wellness: Policy for Low Risk Devices." The guidance is intended to provide clarity to industry and FDA staff on Center for Devices and Radiological Health's (CDRH) compliance policy for low-risk products that promote a healthy lifestyle (general wellness products). By clarifying the policy on general wellness products, we hope to improve the predictability, consistency, and transparency on CDRH's regulation of these products. For purposes of the guidance, CDRH defines "general wellness products" as products which meet the following factors: They are intended for only general wellness use as defined in the guidance and present a low risk to the safety of users and other persons.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2014–N–1039 for "General Wellness: Policy for Low Risk Devices." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "General Wellness: Policy for Low Risk Devices" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Bakul Patel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5458, Silver Spring, MD 20993–0002, 301–796–5528.

SUPPLEMENTARY INFORMATION:

I. Background

CDRH does not intend to examine low risk general wellness products to determine whether they are devices within the meaning of section 201(h) (21 U.S.C. 321(h)) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) or, if they are devices, whether they comply with the premarket review and postmarket regulatory requirements for devices under the FD&C Act and implementing regulations, including, but not limited to: Registration and listing and premarket notification requirements (21 CFR part 807); labeling requirements (21 CFR part 801 and 21 CFR 809.10); good manufacturing practice requirements as set forth in the Quality System regulation (21 CFR part 820); and Medical Device Reporting (MDR) requirements (21 CFR part 803).

For purposes of the guidance, CDRH defines "general wellness products" as products which meet the following factors: (1) Are intended for only general wellness use as defined in the guidance and (2) present a low risk to the safety of users and other persons. A general wellness product has an intended use that relates to maintaining or encouraging a general state of health or a healthy activity, or has an intended use that relates the role of healthy lifestyle with helping to reduce the risk or impact of certain chronic diseases or conditions and where it is well understood and accepted that healthy lifestyle choices may play an important role in health outcomes for the disease or condition.

CDRH's general wellness policy applies only to general wellness products that are low risk. In order to be considered low risk for purposes of the guidance, the product must not: (1) Be invasive, (2) be implanted, or (3) involve an intervention or technology that may pose risk to the safety of users and other persons if specific regulatory controls are not applied, such as risks from lasers or radiation exposure.

General wellness products may include exercise equipment, audio recordings, video games, software programs, and other products that are commonly, though not exclusively, available from retail establishments (including online retailers and distributors that offer software to be directly downloaded), when consistent with the factors outlined in the guidance.

The FDA published in the **Federal Register** of January 20, 2015 (80 FR 2712), the notice of availability for the draft guidance entitled "General Wellness: Policy for Low Risk Devices; Draft Guidance for Industry and Food and Drug Administration Staff" and the comment period for the guidance closed on April 20, 2015.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on General Wellness: Policy for Low Risk Devices. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of "General Wellness: Policy for Low Risk Devices" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1300013 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807 (registration and listing and premarket notification (510(k))) have been approved under OMB control numbers 0910–0625 and 0910–0120, respectively; the collections of information in part 801 and § 809.10 (labeling) have been approved under OMB control number 0910–0485; the collections of information in part 820 (good manufacturing practice requirements as set forth in the quality system regulation) have been approved under OMB control number 0910–0073; and the collections of information in part 803 (MDR requirements) have been approved under OMB control number 0910–0437.

Dated: July 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–17902 Filed 7–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857; (301) 443–6593, or visit our Web site at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that "[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**." Set forth below is a list of petitions received by HRSA on June 1, 2016, through June 30, 2016. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

a. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by" one of the vaccines referred to in the Table, or

b. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: July 22, 2016.

James Macrae,

Acting Administrator.

List of Petitions Filed

1. Ruby Lorenzo, Phoenix, Arizona, Court of Federal Claims No: 16–0647V.
2. Jacqueline Berg on behalf of Marilyn Moss, Deceased, Wellesley Hills, Massachusetts, Court of Federal Claims No: 16–0650V.
3. Sarah Etheridge-Criswell, Van Nuys, California, Court of Federal Claims No: 16–0652V.
4. Lisa Picker, St. Louis, Missouri, Court of Federal Claims No: 16–0654V.
5. Joann Brenner, Huntington Valley, Pennsylvania, Court of Federal Claims No: 16–0656V.
6. Talat Pervez, Long Island City, New York, Court of Federal Claims No: 16–0657V.
7. Gayle E. Gagne, Greenwood, Indiana, Court of Federal Claims No: 16–0660V.
8. Linda Ybarra, Dallas, Texas, Court of Federal Claims No: 16–0661V.
9. Stephen Capozzoli, Smithtown, New York, Court of Federal Claims No: 16–0666V.
10. Margaret Elledge, Carlsbad, California, Court of Federal Claims No: 16–0667V.
11. Nicholas Edwards, Fort Worth, Texas, Court of Federal Claims No: 16–0668V.
12. Christi Jewell, Jefferson, Ohio, Court of Federal Claims No: 16–0670V.
13. Luis C. Ramos, North Kansas City, Missouri, Court of Federal Claims No: 16–0673V.
14. Gregory Thompson, Philadelphia, Pennsylvania, Court of Federal Claims No: 16–0675V.
15. Fonda Bravo, Asheville, North Carolina, Court of Federal Claims No: 16–0679V.
16. Virginia A. Calfee, Christiansburg, Virginia, Court of Federal Claims No: 16–0680V.
17. Candy F. Hall, Linwood, New Jersey, Court of Federal Claims No: 16–0681V.
18. Hamid Ahmed, Dallas, Texas, Court of Federal Claims No: 16–0684V.
19. Marietta Schenck, Sarasota, Florida, Court of Federal Claims No: 16–0685V.

20. Candy Glascock, Warrenton, Virginia, Court of Federal Claims No: 16–0686V.
21. Elizabeth Weeks Blake, Columbia, South Carolina, Court of Federal Claims No: 16–0689V.
22. Amy Dunlap, Wilmington, Delaware, Court of Federal Claims No: 16–0690V.
23. Albert Wilson, Franklin, North Carolina, Court of Federal Claims No: 16–0691V.
24. Sharon Cagle, Truckee, California, Court of Federal Claims No: 16–0693V.
25. Sophie Rose, Staten Island, New York, Court of Federal Claims No: 16–0696V.
26. Joseph Brunner, Erie, Pennsylvania, Court of Federal Claims No: 16–0698V.
27. Lisa Antalosky, Chicago, Illinois, Court of Federal Claims No: 16–0701V.
28. Grace Drummond, Baraboo, Wisconsin, Court of Federal Claims No: 16–0702V.
29. Barbara Sanders, Jackson, Mississippi, Court of Federal Claims No: 16–0704V.
30. Lauretta Harvey, Boston, Massachusetts, Court of Federal Claims No: 16–0705V.
31. Crystal Eckhart on behalf of Z. E., Riverside, California, Court of Federal Claims No: 16–0706V.
32. Kristine Davies and Joseph Davies on behalf of A. D., Doylestown, Pennsylvania, Court of Federal Claims No: 16–0707V.
33. Jill M. Simmers on behalf of Elizabeth K. Samson, Tiffin, Ohio, Court of Federal Claims No: 16–0711V.
34. Martin Desiderio, Harrisburg, Pennsylvania, Court of Federal Claims No: 16–0713V.
35. Shirley Frazier, Cleveland, Tennessee, Court of Federal Claims No: 16–0714V.
36. Irene Driscoll, Milwaukee, Wisconsin, Court of Federal Claims No: 16–0715V.
37. Lucianna Dilsaver, Boston, Massachusetts, Court of Federal Claims No: 16–0716V.
38. Taylor Tucker, Washington, District of Columbia, Court of Federal Claims No: 16–0718V.
39. Robert E. McCloud, Washington, District of Columbia, Court of Federal Claims No: 16–0719V.
40. Beverly Ann Normand, Chicago, Illinois, Court of Federal Claims No: 16–0720V.
41. Briana N. White on behalf of K. A. W., Deceased, Kingsport, Tennessee, Court of Federal Claims No: 16–0721V.
42. Teresa Thompson, Harlan, Kentucky, Court of Federal Claims No: 16–0722V.
43. Edith Bognar, Phoenix, Arizona, Court of Federal Claims No: 16–0726V.
44. Joan Jenkins, Front Royal, Virginia, Court of Federal Claims No: 16–0727V.
45. Mabel B. Markham, Seattle, Washington, Court of Federal Claims No: 16–0728V.
46. Randy Polk, Phoenix, Arizona, Court of Federal Claims No: 16–0729V.
47. Courtney P. Binette, Washington, District of Columbia, Court of Federal Claims No: 16–0731V.
48. LaVon H. Drake, Greenville, North Carolina, Court of Federal Claims No: 16–0732V.
49. Lora Thomas, Calumet City, Illinois, Court of Federal Claims No: 16–0733V.
50. Kevin Otteni, Washington, District of Columbia, Court of Federal Claims No: 16–0735V.
51. Roberta Pek, Dresher, Pennsylvania, Court of Federal Claims No: 16–0736V.
52. Anthony Sclafani, Boston, Massachusetts, Court of Federal Claims No: 16–0737V.
53. Theodore Martinez and Sarah Martinez on behalf of W. M., Minneapolis, Minnesota, Court of Federal Claims No: 16–0738V.
54. Irma Salas, Boston, Massachusetts, Court of Federal Claims No: 16–0739V.
55. Amanda Biers-Melcher, Burbank, California, Court of Federal Claims No: 16–0742V.
56. Helene Melancon, Boston, Massachusetts, Court of Federal Claims No: 16–0743V.
57. Audrey Cropp, Dresher, Pennsylvania, Court of Federal Claims No: 16–0745V.
58. Constance Kohl, Englewood, New Jersey, Court of Federal Claims No: 16–0748V.
59. Edward Mitchell, Cupertino, California, Court of Federal Claims No: 16–0749V.
60. Lorry J. Galbreath, St. Louis, Missouri, Court of Federal Claims No: 16–0751V.
61. Timothy Anderson, Washington, District of Columbia, Court of Federal Claims No: 16–0752V.
62. Christian Panaitescu and Mihaela Panaitescu on behalf of R P, Vienna, Virginia, Court of Federal Claims No: 16–0753V.
63. Kady Alexis Malloy, Houston, Texas, Court of Federal Claims No: 16–0754V.
64. Rosina Rohrs, Dresher, Pennsylvania, Court of Federal Claims No: 16–0756V.
65. Crisanne Hitler, Dresher, Pennsylvania, Court of Federal Claims No: 16–0757V.
66. Jessica Barrett, Dresher, Pennsylvania, Court of Federal Claims No: 16–0759V.
67. Kimberly Beining, Sarasota, Florida, Court of Federal Claims No: 16–0761V.
68. David Miron, Minneapolis, Minnesota, Court of Federal Claims No: 16–0762V.
69. Luzelva Rojo, Rancho Santa Margarita, California, Court of Federal Claims No: 16–0763V.
70. Mariana Creighton-O'Connor, Dresher, Pennsylvania, Court of Federal Claims No: 16–0764V.
71. Judith Frolish, Boston, Massachusetts, Court of Federal Claims No: 16–0765V.
72. Max Baum, Beverly Hills, California, Court of Federal Claims No: 16–0766V.
73. Tonya Thomas, Beverly Hills, California, Court of Federal Claims No: 16–0767V.
74. Joe Green, Beverly Hills, California, Court of Federal Claims No: 16–0768V.
75. Joann Savage, Dallas, Texas, Court of Federal Claims No: 16–0769V.
76. Debra Rehm, Washington, District of Columbia, Court of Federal Claims No: 16–0770V.
77. Kimberly Hill, Beverly Hills, California, Court of Federal Claims No: 16–0771V.
78. Laura Chavolla-Zacarias, Beverly Hills, California, Court of Federal Claims No: 16–0772V.
79. Olesya Milano on behalf of A M, Beverly Hills, California, Court of Federal Claims No: 16–0773V.
80. Wendell Davis, Beverly Hills, California, Court of Federal Claims No: 16–0774V.
81. Alan Kozuki, Dresher, Pennsylvania, Court of Federal Claims No: 16–0776V.
82. Cathy Sutter, Dresher, Pennsylvania, Court of Federal Claims No: 16–0777V.
83. Denise Jennings on behalf of D.J., Farmington Hills, Michigan, Court of Federal Claims No: 16–0779V.
84. Kathryn Scott-Hlavac, Washington, District of Columbia, Court of Federal Claims No: 16–0781V.
85. Irene Deniston, Dresher, Pennsylvania, Court of Federal Claims No: 16–0782V.
86. Eliana Autry, Memphis, Tennessee, Court of Federal Claims No: 16–0785V.

[FR Doc. 2016–17946 Filed 7–28–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 15, 2016.

Closed: 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Terrace Level Conference Rooms, 5635 Fishers Lane, Rockville, MD 20852.

Open: 10:15 a.m. to 4:00 p.m.

Agenda: Presentations and other business of the Council.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Terrace Level Conference Rooms, 5635 Fishers Lane, Rockville, MD 20852.

Contact Person: Abraham P. Bautista, Ph.D., Executive Secretary, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2085, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: July 26, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17999 Filed 7–28–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute Of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environmental Health Sciences Review Committee.

Date: August 16–17, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Chapel Hill Hotel, One Europa Drive Chapel, Chapel Hill, NC

Contact Person: Linda K Bass, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 26, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–18001 Filed 7–28–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Council of Councils.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Council of Councils.

Open: September 9, 2016.

Time: 8:30 a.m. to 11:40 a.m.

Agenda: Call to Order and Introductions; Announcements and Updates; MSKCC Center for Precision Disease Modeling; Concept Clearance; Human Tissue and Organ Repository; NIH Update; Discussion; Concept Clearance.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: September 9, 2016.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: Review of grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Open: September 9, 2016.

Time: 1:00 p.m. to 4:20 p.m.

Agenda: Council Operation Procedures; Concept Clearance; Limited Competition for Veterinary K01 Grantees to Apply for R03 Grants; Common Fund Planning Updates; PMI Cohort Program Update; Report from the Sexual and Gender Minority Research Working Group; Retiring Council Member Perspectives; Closing Remarks.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov,* 301–435–0744.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: July 26, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–18002 Filed 7–28–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Environmental Health Sciences Core Review Meeting.

Date: August 17, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Imperial Center, One Europa Drive, Chapel Hill, NC 27517.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P. O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 26, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–18000 Filed 7–28–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pilot Clinical Urology Studies.

Date: August 5, 2016.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: *July 25, 2016.*

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17997 Filed 7–28–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Age-Related Macular Degeneration and Other Eye Disorders.

Date: August 25, 2016.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C Edwards, Ph.D., IRG CHIEF, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 26, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–17998 Filed 7–28–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0031]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Chemical Transportation Advisory Committee and its subcommittees will meet on September 27, 28, and 29, 2016, in Washington DC, to discuss the safe and secure marine transportation of hazardous materials. These meetings will be open to the public.

DATES: Subcommittees will meet on Tuesday, September 27, 2016, from 9 a.m. to 5 p.m. and on Wednesday, September 28, 2016, from 9 a.m. to 5 p.m. The full committee will meet on Thursday, September 28, 2016, from 9 a.m. to 5 p.m. (All times are Eastern Standard Time). Please note that these meetings may close early if the Committee has completed its business.

ADDRESSES: These meetings will be held at the U.S. Coast Guard Headquarters, 2703 Martin Luther King Jr. Ave. SE., Washington, DC 20593–6509. Foreign national attendees will be required to pre-register no later than 5 p.m. on August 31, 2016, to be admitted to the meeting. U.S. Citizen attendees will be required to pre-register no later than 5 p.m. on September 19, 2016, to be admitted to the meeting. To pre-register, contact Lieutenant Commander Julie Blanchfield at *julie.e.blanchfield@uscg.mil,* with CTAC in the subject line and provide your name, company, and telephone number; if a foreign national, also provide your country of citizenship, and passport number and expiration date. All attendees will be required to provide government-issued picture identification in order to gain admittance to the building.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Instructions: To facilitate public participation, written comments on the issues in the in the "Agenda" section below must be submitted no later than August 31, 2016, if you want committee members to review your comments prior to the meeting. You must include "Department of Homeland Security" and the docket number (USCG–2016–0031). Written comments may be submitted using the Federal eRulemaking Portal: *http://www.regulations.gov.* For technical difficulties contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Docket Search: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov,* type USCG–2016–0031 in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Keffler, Designated Federal Official of the Chemical Transportation Advisory Committee, 2703 Martin Luther King Jr. Ave. SE., Stop 7509, Washington, DC 20593–7509, telephone 202–372–1424, fax 202–372–8380, or *patrick.a.keffler@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the Federal Advisory Committee Act, (Title 5, United States Code Appendix).

The Chemical Transportation Advisory Committee is an advisory committee authorized under section 871 of the Homeland Security Act of 2002, 6 United States Code 451, and is chartered under the provisions of the Federal Advisory Committee Act. The committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security through the Commandant of the Coast Guard and the Deputy Commandant for Operations on matters relating to safe and secure marine transportation of hazardous materials, insofar as they relate to matters within the United States Coast Guard's jurisdiction. The Committee advises, consults with, and makes recommendations reflecting its independent judgment to the Secretary.

Agendas of Meetings

Subcommittee Meetings on September 27 and 28, 2016

The subcommittee meetings will separately address the following tasks:

(1) Task Statement 13–03: Safety Standards for the Design of Vessels Carrying Natural Gas or Using Natural Gas as Fuel.

(2) Task Statement 13–01: Recommendations for Guidance on the Implementation of Revisions to International Convention for the Prevention of Pollution from Ships (MARPOL) Annex II and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (commonly known as IBC code) and 46 CFR 153 Regulatory Review.

(3) Task Statement 15–01: Marine Vapor Control System Certifying Entities Guidelines update and Vapor Control System supplementary guidance for the implementation of the final rule.

The task statements from the last committee meeting are located at Homeport at the following address: *https://homeport.uscg.mil.* Go to: Missions > Ports and Waterways > Safety Advisory Committees > CTAC Subcommittees and Working Groups.

The agenda for each subcommittee will include the following:

1. Review task statements, which are listed in paragraph (4) of the agenda for the September 29, 2016, meeting.
2. Work on tasks assigned in task statements mentioned above.
3. Public comment period.
4. Discuss and prepare proposed recommendations for the Chemical Transportation Advisory Committee meeting on September 29, 2016, on tasks assigned in detailed task statements mentioned above.

Full Committee Meeting on September 29, 2016

The agenda for the Chemical Transportation Advisory Committee meeting on September 29, 2016, is as follows:

1. Introductions and opening remarks.
2. Coast Guard Leadership Remarks.
3. Public comment period.
4. Committee will review, discuss, and formulate recommendations on the following items:
   a. Task Statement 13–03: Safety Standards for the Design of Vessels Carrying Natural Gas or Using Natural Gas as Fuel.
   b. Task Statement 15–01: Marine Vapor Control System Certifying Entities Guidelines update and Vapor Control System supplementary guidance for the implementation of the final rule.
   c. Task Statement 13–01: Recommendations for Guidance on the Implementation of Revisions to the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex II and the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (commonly known as IBC code) and 46 CFR 153 Regulatory Review.
5. USCG presentations on the following items of interest:
   a. Update on International Maritime Organization activities as they relate to the marine transportation of hazardous materials.
   b. Update on U.S. regulations and policy initiatives as they relate to the marine transportation of hazardous materials.
6. Set next meeting date and location.
7. Set subcommittee meeting schedule.

A public comment period will be held during each Subcommittee and the full committee meeting concerning matters being discussed. Public comments will be limited to 3 minutes per speaker. Please note that the public comment period may end before the time indicated, following the last call for comments. Please contact Mr. Patrick Keffler listed in the **FOR FURTHER INFORMATION CONTACT** section, to register as a speaker.

Dated: July 26, 2016.

J.G. Lantz,

Director of Commercial Regulations and Standards, United States Coast Guard.

[FR Doc. 2016–18035 Filed 7–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0016]

Agency Information Collection Activities: Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act, Form I–191; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on May 9, 2016, at 81 FR 28097, allowing for a 60-day public comment period. USCIS received comments from 1 commenter in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 29, 2016. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806 (This is not a toll-free number). All submissions received must include the agency name and the OMB Control Number 1615–0016.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0070 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection

(2) *Title of the Form/Collection:* Application for Relief under Former Section 212(c) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–191; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–191 is necessary for USCIS to determine whether the applicant is eligible for discretionary relief under former section 212(c) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–191 is 600 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 900 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: $75,750.

Dated: July 21, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–17968 Filed 7–28–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5921–N–10]

Implementation of the Privacy Act of 1974, as Amended; Amended System of Records Notice, Active Partners Performance System

AGENCY: Office of Housing, HUD.

ACTION: Amended System of Records notice.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department's Office of Housing, Asset Management and Portfolio Oversight Division propose to amend and reissue a current system of records notice (SORN): Active Partners Performance System (APPS). This SORN was previously titled Previous Participation Review System and Active Partners Performance System Previous Participation Files, HUD/H07. The notice amendment includes administrative updates to the categories of individuals covered, categories of records, authority for maintenance, routine uses, storage, safeguards, retention and disposal, system manager and address, notification procedures,

records access, contesting records procedures, and records source categories. These sections are amended to reflect the present status of the information contained in the system. The existing scope, objectives, and business processes in place for the program remain unchanged. The routine use instances recorded by this SORN were previously translated in the **Federal Register** on December 31, 2015 at 80 FR 81837–81840. This amendment deletes and supersedes the HUD/H07 publication. The updated notice will be included in the Department's inventory of SORNs.

DATES:

Effective Date: This notice action shall be effective immediately, which will become effective August 29, 2016.

Comments Due Date: August 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Faxed comments are not accepted. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Frieda B. Edwards, Acting Chief Privacy Officer, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number 202–402–6828 (this is not a toll-free number). Individuals who are hearing- and speech-impaired may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: This notice updates and refines previously published information pertaining to APPS in a clear and easy to read format. The notice identifies activities and records pertaining to: (1) Submission and review of a multifamily housing principals previous participation and/or certification in a multifamily housing project; and (2) consideration, approval, and disapproval of a principals participation in a multifamily housing project; (3) a principals previous participation with HUD or other housing agencies; (4) summary of financial, management, or operational difficulties the principals may have had with prior HUD projects; and (5) flag indication of whether the principals are or have been the subject of a government investigation. The amended notice conveys administrative updates to the notice's title, categories of individuals covered, categories of records, routine uses, storage, safeguards, retention and disposal, system manager and address, notification procedures, records access and contesting procedures, and records source captions. The Privacy Act places on Federal agencies principal responsibility for compliance with its provisions, by requiring Federal agencies to safeguard an individual's records against an invasion of personal privacy; protect the records contained in an agency system of records from unauthorized disclosure; ensure that the records collected are relevant, necessary, current, and collected only for their intended use; and adequately safeguard the records to prevent misuse of such information. This notice demonstrates the Department's focus on industry best practices and laws that protect interest such as personal privacy and law enforcement records from inappropriate release. This notice states the name and location of the record system, the authority for and manner of its operations, the categories of individuals that it covers, the type of records that it contains, the sources of the information for the records, the routine uses made of the records, and the types of exemptions in place for the records. The notice also includes the business address of the HUD officials who will inform interested persons of how they may gain access to and/or request amendments to records pertaining to themselves.

The amended notice does not meet threshold requirements set forth by paragraph 4c of Appendix l to OMB Circular No. A–130, "Federal Agencies Responsibilities for Maintaining Records About Individuals," November 28, 2000. Therefore, a report was not submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: July 22, 2016.

Patricia A. Hoban-Moore,

Senior Agency Official for Privacy.

SYSTEM OF RECORDS NO.:

HSNG.MFH/HTG.01

SYSTEM NAME:

Active Partners Performance System (APPS)–F24P

SYSTEM LOCATION:

Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410; HUD Field and Regional offices[1] where in some cases APPS records may be maintained or accessed. The physical system is maintained for HUD under contract at the HUD Information Technology Systems Production Data Center at 2020 Union Carbine Drive, South Charleston, WV 25305, and at the location of the service providers under contract with HUD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principals who are approved to participate in HUD's multifamily projects such as owners, general contractors, management agents, consultants, facility operators and developers.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) *Contact Information:* Name, work/personal address, work/personal telephone number, work/personal email address.

(2) *Previous Participation Information:* Social Security number (SSN), tax identification number (TIN), and entity type and their legal structure.

(3) *Project Level Information:* Lists of prior HUD projects; summary of financial, management, or operational difficulties with prior HUD projects (if any); indication of whether principals are or have been the subject of a government investigation; other information relevant to the standards for previous participation approval; minutes of deliberative meetings; flags and the reason for the flag on an external individual or company participant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d), Department of Housing and Urban Development Act, 79 Stat. 670, (42 U.S.C. 3535(d)). HUD is authorized to collect the Social Security Number (SSN) by Section 165(a) of the Housing and Community Development Act of 1987, Public Law 100–242 (42 U.S.C. 3543).

PURPOSE(S):

APPS was developed to automate the submission and review of the Housing and Urban Development (HUD) previous participation certification process (Form HUD–2530), which initiates the review and approval process for industry entities who would participate in a HUD project. The data collected through the HUD–2530 process is used by HUD employees to assess applicant's suitability to participate in HUD projects in light of their track record in carrying out financial, legal and contractual obligations in previous projects, in a satisfactory and timely manner. An approved HUD–2530 is a prerequisite for industry partners to participate in HUD projects. APPS contains data concerning principal participants in multifamily housing projects, including their previous participation with HUD or other housing agencies. APPS also tracks non-compliance of multifamily project participants' by flagging the participants for non-compliance with regulatory and contractual agreements. Flags are used to evaluate the risk of the participants prior to approval for future participation.

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[1] *http://portal.hud.gov/hudportal/HUD?src=/localoffices.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside HUD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

(1) To State and local governments participating in HUD housing programs as co-insurers or finance agencies—to assist in project application reviews.

(2) To appropriate agencies, entities, and persons to the extent such disclosures are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I, HUD's Routine Use Inventory Notice,[2] published in the **Federal Register**.

(3) To appropriate agencies, entities, and persons when:

(a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

(b) HUD has determined, that as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and

(c) The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

(4) To the National Archives and Records Administration (NARA) or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

(5) To a congressional office from the record of an individual, in response to an verified inquiry from that congressional office, made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically on Internet/Intranet application servers. Paper records are scanned and converted into a uniform electronic format. The hard copies, after scanning, are stored at the NARA records management center.

RETRIEVABILITY:

Electronic records are retrieved by name, submission ID and TIN.

RETENTION AND DISPOSAL:

Data records and information submitted on the HUD Form 2530, Previous Participation Certification, are destroyed 3 years after the Secretary ceases to have any liability and/or interest in the project. The hard copies, after scanning, are stored in the NARA records management center. Electronic records will be destroyed pursuant to NIST Special Publication 800–88, "Guidelines for Media Sanitization." Reference: HUD Records Disposition Schedule, Schedule 18, item 5: Previous Participation Approvals (NARA Job NCl–207–79–3), item 5. Note: This schedule is currently under review in accordance with OMB Memorandum M–12–18, Section 2.5.

SAFEGUARDS:

Access to the system, storage, backup and infrastructure equipment is monitored and by password and code identification cards access and limited to authorized users.

SYSTEM MANAGER(S) AND ADDRESS:

Devasia Karimpanal, Program Specialist, Office of Multifamily Asset Management and Portfolio Oversight, Business Relationships and Support Contracts Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD ACCESS AND NOTIFICATION PROCEDURES:

For Information, assistance, or inquiries about the existence of records, contact Frieda B. Edwards, Acting Chief Privacy Officer, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number 202–402–6828 (this is not a toll-free number). When seeking records about yourself from this system of records or any other HUD system of records, your request must conform to the Privacy Act regulations set forth in 24 CFR part 16. You must first verify your identity by providing your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, your request should:

a. Explain why you believe HUD would have information on you.

b. Identify which HUD office you believe has the records about you.

c. Specify when you believe the records would have been created.

d. Provide any other information that will help the FOIA staff determine which HUD office may have responsive records.

If you are seeking records pertaining to another living individual, you must obtain a statement from that individual certifying their agreement for you to access their records. Without the above information, the HUD FOIA Office may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR part 16.3, "Procedures for Inquiries." Additional assistance may be obtained by contacting Frieda B. Edwards, Acting Chief Privacy Officer, 451 Seventh Street SW., Room 10139, Washington, DC 20410, or the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10110, Washington DC 20410.

RECORD SOURCE CATEGORIES:

The sources for information in the system are from the subject individuals and entities for whom the records are maintained; HUD Field Offices; other governmental agencies. Individuals and entities register at the Business Partner Registration link on APPS Web page and the information is transferred to APPS secure database.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT: NONE.

[FR Doc. 2016–18026 Filed 7–28–16; 8:45 am]

BILLING CODE 4210–67–P

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[2] *http://portal.hud.gov/hudportal/documents/huddoc?id=routine_use_inventory.pdf.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5885–N–06]

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2016; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Final Fiscal Year (FY) 2016 Fair Market Rents (FMRs), Update.

SUMMARY: Today's notice updates the FY 2016 FMRs for Maui County, HI HUD Metro FMR Area (HMFA) and Kauai County, HI, based on a survey of rents conducted in April, 2016, by the area public housing agencies (PHAs). The revised FY 2016 FMRs for these areas reflect the estimated 40th percentile rent for April, 2016.

DATES: *Effective Date:* The FMRs published in this notice are effective on July 29, 2016.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER Web site: *http://www.huduser.gov/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2016 FMR documentation system at *http://www.huduser.gov/portal/datasets/fmr/fmrs/docsys.html?data=fmr16* and 50th percentile rents for all FMR areas are published *http://www.huduser.gov/portal/datasets/50per.html.*

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–402–2409. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. (Other than the HUD USER information line and TDD numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The FMRs appearing in the following table supersede the values found in Schedule B that became effective on May 3, 2016, and were printed in the May 3, 2016 **Federal Register** (available from HUD at: *http://www.huduser.gov/portal/datasets/fmr.html).*

The FMRs for the affected area are revised as follows:

2016 Fair market rent area	FMR by number of bedrooms in unit				
	0 BR	1 BR	2 BR	3 BR	4 BR
Kauai County, HI	890	1155	1420	1858	2191
Maui County, HI HMFA	1080	1203	1522	2218	2436

Dated: July 11, 2016.

Katherine M. O'Regan,

Assistant Secretary for Policy Development & Research.

[FR Doc. 2016–17932 Filed 7–28–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–53]

30-Day Notice of Proposed Information Collection: Form 50900: Elements for the Annual Moving to Work Plan and Annual Moving to Work Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: August 29, 2016.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 1, 2016 at 81 FR 10647.

A. Overview of Information Collection

Title of Information Collection: Form 50900: Elements for the Annual Moving to Work Plan and Annual Moving to Work Report.

OMB Approval Number: 2577–0216.

Type of Request: Revision of previously approved collection.

Form Number: HUD–50900.

Description of the need for the information and proposed use: All Public Housing Authorities (PHAs) are required to submit a five (5) Year Plan and Annual Plans as stated in Section 5A of the 1937 Act, as amended; however, for PHAs with specific types of Moving to Work (MTW) demonstration agreements (39 at the time of submission of this request) the Annual MTW Plan and Annual MTW Reports are submitted in lieu of the standard annual and 5 year PHA plans.

The MTW Demonstration was authorized under Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134, 110 Stat 1321), dated April 26, 1996. The original MTW Demonstration statute permitted up to 30 PHAs to participate in the demonstration program. Nineteen PHAs were selected for participation in the MTW demonstration in response to a HUD Notice published in the **Federal**

Register on December 18, 1996 and five of the 30 slots were filled through the Jobs-Plus Community Response Initiative.

Additional MTW 'slots' have been added by Congress over time through appropriations statutes. Two PHAs were specifically named and authorized to join the demonstration in 1999 under the VA, HUD, and Independent Agencies Appropriations Act of 1999 (Pub. L. 105–276, 112 Stat. 2461), dated October 21, 1998. A Public and Indian Housing Notice (PIH Notice 2000–52) issued December 13, 2000, allowed up to an additional 6 PHAs to participate in the MTW demonstration. The Consolidated Appropriations Act, 2008 (Pub. L. 110–161, 121 Stat. 1844) added four named PHAs to the Moving to Work demonstration program.

Subsequent Appropriations Acts for 2009, 2010, and 2011 authorized a total of 12 additional MTW slots. As part of HUD's 2009 budget appropriation (Section 236, title II, division I of the Omnibus Appropriations Act, 2009, enacted March 11, 2009), Congress directed HUD to add three agencies to the MTW program. As part of HUD's 2010 budget appropriation (Section 232, title II, division A of the Consolidated Appropriations Act, 2010, enacted December 16, 2009), Congress authorized HUD to add three agencies to the MTW demonstration. In 2011, Congress again authorized HUD to add three MTW PHAs pursuant to the 2010 Congressional requirements.

A Standard MTW Agreement (Standard Agreement) was developed in 2007, and was transmitted to the existing MTW agencies in January, 2008. As additional MTW PHAs were selected they too were provided with the Standard Agreement. All 39 existing MTW agencies operate under this agreement, which authorizes participation in the demonstration through each agency's 2018 fiscal year. HUD is currently working on an extension of the Standard Agreement to 2028, as required by the Consolidated Appropriations Act, 2016.

Under the Standard Agreement, all MTW sites are authorized to combine their operating, modernization and housing choice voucher funding into a single "block" grant. Because they cannot conform with the requirement for the regular PHA annual and 5 year plans, and because HUD requires different information from these PHAs for program oversight purposes, these sites are required to submit an annual MTW Plan and an annual MTW Report in accordance with their MTW Agreement, in lieu of the regular PHA annual and 5 year plans.

Through the MTW Annual Plan and Report, each MTW site will inform HUD, its residents and the public of the PHA's mission for serving the needs of low-income and very low-income families, and the PHA's strategy for addressing those needs. The MTW Annual Plan, like the Annual PHA Plan, provides an easily identifiable source by which residents, participants in tenant-based programs, and other members of the public may locate policies, rules, and requirements concerning the PHA's operations, programs, and services. Revisions are being made to this 50900 form to improve its usability and to address minor issues identified by HUD and the MTW PHAs over time. The form is also being updated also to implement provisions of the Department's affirmatively furthering fair housing (AFFH) rule (24 CFR 5.150–5.180).

Respondents: The respondents to this PRA are the 39 Public Housing Authorities (PHAs) that currently have the MTW designation.

Estimated Number of Respondents: 39.

Estimated Number of Responses: 468. There are 7 sections associated with this Form requiring response. All 7 sections are completed with the first annual submission (Plan), and 5 of the 7 are completed with the second annual submission (Report). This results in a total of 12 total responses per PHA, or 468 total responses per year across all 39 affected PHAs.

Frequency of Response: MTW PHAs complete requirements associated with this Form twice per year (Plan and Report). In the Plan, the PHA completes all 7 sections of the Form. In the Report, the PHA completes only 5 of the 7 sections of the Form.

Average Hours per Response: The estimated average burden is 40.5 hours per response (or 81 total hours per year).

Total Estimated Burdens: 4680 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 22, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–18028 Filed 7–28–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), call the toll-free Title V information line at 800–927–7588 or send an email to *title5@hud.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)–443–2265 (This is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland TX 78236–9853, (315) 225–7384; ARMY: Ms. Veronica Rines, Office of the Assistant Chief of Staff for Installation Management, Department of Army, Room 5A128, 600 Army Pentagon, Washington, DC 20310, (571) 256–8145; COE: Ms. Brenda Johnson-Turner, HQUSACE/CEMP–CR, 441 G Street NW., Washington, DC 20314, (202) 761–7238; COAST GUARD: Mr. John Ericson, Commandant (CG–437), U.S. Coast Guard, Stop 7714, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593–7714; (202) 475–5602; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; NASA: Mr. William Brodt, National Aeronautics and Space Administration, 300 E Street SW., Room 2P85, Washington, DC 20546, (202) 358–1117; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374, (202) 685–9426 (These are not toll-free numbers).

Dated: July 21, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 07/29/2016

Suitable/Available Properties

Building

Arkansas

Vault Toilet Concrete with slab
1528 Hwy 32 East
Ashdown AR 71822
Landholding Agency: COE
Property Number: 31201630002
Status: Unutilized
Directions: Acct #MWL01C11 Property ID# MWOOD–55162 Beard's Bluff Park Millwood Lake
Comments: off-site removal only; 20+ yrs. old; 168 sq. ft.; toilet; 12+ mos. vacant; severely damaged from flood; contact COE for more information.

Texas

20 Buildings
Red River Army Depot
Texarkana TX 75507
Landholding Agency: Army
Property Number: 21201630001
Status: Excess
Directions: 02095; 02101; 02109; 02113; 02125; 02127; 02135; 02143; 02145; 02197; 02263; 02261; 02205; 02255; 02249; 02247; 02241; 02211; 02217; 02235
Comments: off-site removal only; poor conditions; 168 sq. ft. each; safety shelters; contact Army for more details on a specific property listed above.

15 Buildings
Red River Army Depot
Texarkana TX 75507–5000
Landholding Agency: Army
Property Number: 21201630002
Status: Excess
Directions: 02287; 02275; 02271; 02379; 02289; 02323; 02351; 02397; 02403; 02419; 02423; 02383; 02093; 02305; 02309
Comments: off-site removal only; poor conditions; 168 sq. ft. for each; contact Army for more details on a specific property listed above.

2 Buildings
Red River Army Depot
Texarkana TX 75507
Landholding Agency: Army
Property Number: 21201630005
Status: Excess
Directions: 02369 (257 sq. ft.; access control facility); 00450 (44 sq. ft.; FE Maint.)
Comments: off-site removal only; very poor conditions; contact Army for more specific details on a property listed above.

Land

Florida

Former Locator Outer Marker (LOM/OM)
17364 Dumont Drive
Fort Myers FL 33967
Landholding Agency: GSA
Property Number: 54201630002
Status: Excess
GSA Number: 4–U–FL–1334AA
Comments: 0.50 acres of land; partially gravel; outer marker locator.

Unsuitable Properties

Building

Florida

2 Buildings
Naval Air Station Pensacola
Pensacola FL 32508
Landholding Agency: Navy
Property Number: 77201630002
Status: Unutilized
Directions: Building 3233 & 3234
Comments: public acc. denied and no alter. method to gain access w/out comp. Nat. sec.; Doc. def.: doc. prov. represents a clear threat to pers. phys. safety; walls deter.; sustained dam. from hurricane Ivan.
Reasons: Extensive deterioration; Secured Area

New Jersey

UDC Embroidery Shop (845109)
414 Madison Avenue
Woodbine NJ 08270
Landholding Agency: Coast Guard
Property Number: 88201630002
Status: Excess
Directions: U.S. Coast Guard Uniform Distribution Center
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

North Carolina

Guest Housing Trailer #16F (24041)
1664 Weeksville Road
Elizabeth City NC 27909
Landholding Agency: Coast Guard
Property Number: 88201630001
Status: Excess
Comments: public access denied and no alternative method to gain access without compromising national security; located within an airport runway clear zone or military airfield.
Reasons: Secured Area

Ohio

Building 2005, Traffic Check House
8011 Zistel Street
Columbus OH 43217
Landholding Agency: Air Force
Property Number: 18201630003
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

4 Buildings
Glenn Research Center
Brook Park OH 44135
Landholding Agency: NASA
Property Number: 71201630005
Status: Underutilized
Directions: 0135, 0035,0021, 0024
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Texas

3 Buildings
Red River Army Depot
Texarkana TX 75507
Landholding Agency: Army
Property Number: 21201630006
Status: Excess
Directions: 00909; 01027; 568
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

[FR Doc. 2016–17653 Filed 7–28–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/ A0A501010.999900]

Renewal of Agency Information Collection for Indian Self-Determination and Education Assistance Act Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) has submitted to the Office of Management and Budget (OMB) a request for renewal of the collection of information for Indian Self-Determination and Education Assistance Act Programs, authorized by OMB Control Number 1076–0136. This information collection expires July 31, 2016.

DATES: Interested persons are invited to submit comments on or before August 29, 2016.

ADDRESSES: Please submit your comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Also please send a copy of your comments to Ms. Sunshine Jordan, Acting Division Chief, Office of Indian Services—Division of Self-Determination, 1849 C Street NW., MS 4513–MIB, Washington, DC 20240, telephone: (202) 513–7616; email: *Sunshine.Jordan@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sunshine Jordan, Acting Division Chief, Office of Indian Services—Division of Self-Determination, 1849 C Street NW., MS 4513–MIB, Washington, DC 20240, telephone: (202) 513–7616; email: *Sunshine.Jordan@bia.gov.* You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Indian Self-Determination and Education Assistance Act (ISDEAA) authorizes and directs the Bureau of Indian Affairs (BIA) to contract or compact with and fund Indian Tribes and Tribal organizations that choose to take over the operation of programs, services, functions and activities (PSFAs) that would otherwise be operated by the BIA. These PSFAs include programs such as law enforcement, social services, and tribal priority allocation programs. The contracts and compacts provide the funding that the BIA would have otherwise used for its direct operation of the programs had they not been contracted or compacted by the Tribe, as authorized by 25 U.S.C. 450 *et. seq.*

Congressional appropriations are divided among BIA and Tribes and Tribal organizations to pay for both the BIA's direct operation of programs and for the operation of programs by Tribes and Tribal organizations through Self-Determination contracts and compacts. The regulations implementing ISDEAA are at 25 CFR 900.

The data is maintained by BIA's Office of Indian Services, Division of Self-Determination. The burden hours for this continued collection of information are reflected in the Estimated Total Annual Hour Burden in this notice.

II. Request for Comments

The Bureau of Indian Affairs (BIA) requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0136.

Title: Indian Self-Determination and Education Assistance Act Programs, 25 CFR 900.

Brief Description of Collection: An Indian Tribe or Tribal organization is required to submit this information each time that it proposes to contract with BIA under the ISDEAA. The information collected is used by the BIA to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and resources, and permit the BIA to administer and evaluate Tribal ISDEAA contract programs.

Type of Review: Extension without change of a currently approved collection.

Respondents: Federally recognized Indian Tribes, Tribal organizations and contractors.

Number of Respondents: 567.

Number of Responses: 7,063.

Frequency of Response: Annually.

Obligation to Respond: Responses are required to obtain or maintain a benefit.

Estimated Time per Response: Varies from 4 hours to 122 hours, with an average of 38 hours per response.

Estimated Total Annual Hour Burden: 127,127 hours.

Estimated Total Annual Non-Hour Dollar Cost: $0.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2016–17984 Filed 7–28–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO260000.L10600000.PC0000. LXSIADVSBD00]

Notice of Wild Horse and Burro Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet on Thursday, September 8, 2016, from 1:00 to 5:15 p.m. Pacific Time and Friday, September 9, 2016, from 8:00 a.m. to 4:30 p.m. Pacific Time. This will be a one and a half day meeting.

ADDRESSES: This Advisory Board meeting will take place in Elko, Nevada at the Stockmen's Hotel and Casino, 340 Commercial Street, Elko, NV, 89801, *www.northernstarcasinos.com/Stockmens-hotel-casino,* phone: 775–738–5141. Written comments pertaining to the September 8–9, 2016 Advisory Board meeting can be mailed to the National Wild Horse and Burro Program,WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, NV, 89502–7147, or sent electronically to *whbadvisoryboard@blm.gov.* Please include "Advisory Board Comment" in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775–861–6583 or by email at *rdelorme@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the BLM Director, the Secretary of Agriculture, and the Chief of the Forest Service on matters pertaining to the management and protection of wild, free-roaming horses and burros on the Nation's public lands. The Wild Horse and Burro Advisory Board operates under the authority of 43 CFR 1784. The tentative agenda for the meeting is:

I. Advisory Board Public Meeting

Thursday, September 8, 2016 (1:00–5:15 p.m.)

Welcome, Introductions, and Agenda Review
Approval of April 2016 Meeting Minutes
BLM Response to Advisory Board Recommendations
Wild Horse and Burro Program Update
Public Comment Period will take place from 3:15–5:15 p.m.
Adjourn

Friday, September 9, 2016 (8:00 a.m.–4:30 p.m.)

Wild Horses and Burro Program Update
Working Group Reports
Advisory Board Discussion and Recommendations to the BLM
Adjourn

The meeting will be live-streamed. The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify Ms. DeLorme two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange for it.

The Federal Advisory Committee Management Regulations at 41 CFR 101–6.1015(b), requires the BLM to publish in the **Federal Register** notice of a public meeting 15 days prior to the meeting date.

II. Public Comment Procedures

On Thursday, September 8 at 3:30 p.m., members of the public will have the opportunity to make comments to the Board on the Wild Horse and Burro Program. Persons wishing to make comments during the meeting should register in person with the BLM by 3:00 p.m. on September 8, 2016, at the meeting location. Depending on the number of commenters, the Advisory Board may limit the length of comments. At previous meetings, comments have been limited to three minutes in length; however, this time may vary. Speakers are requested to submit a written copy of their statement to the address listed in the **ADDRESSES** section above, email comments to *whbadvisoryboard@blm.gov,* or bring a written copy to the meeting. There may be a webcam present during the entire meeting and individual comments may be recorded.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments. The BLM considers comments that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations to be the most useful and likely to influence the BLM's decisions on the management and protection of wild horses and burros.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment that the BLM withhold your personal identifying information from public review, the BLM cannot guarantee that it will be able to do so.

Authority: 43 CFR 1784.4–1

Nancy Haug,
Acting Assistant Director, Resources and Planning.

[FR Doc. 2016–18025 Filed 7–28–16; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X.LLAKF01000.L13100000.DB0000. LXSS001L0000]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Alpine Satellite Development Plan for the Proposed Greater Mooses Tooth 2 Development Project, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), the Federal Land Policy and Management Act of 1976, as amended (FLPMA), and the Alaska National Interest Lands Conservation Act of 1980, as amended (ANILCA), the Bureau of Land Management (BLM) Arctic Field Office, Fairbanks, Alaska, intends to prepare a Supplemental Environmental Impact Statement (EIS) for the proposed continuing development of petroleum resources in the Greater Mooses Tooth (GMT) Unit. The development would occur at the proposed Greater Mooses Tooth Two (GMT2) drilling and production pad located within the National Petroleum Reserve in Alaska (NPR–A), a 22.8 million-acre area of BLM-managed land located 200 miles north of the Arctic Circle. The GMT2 development would be connected by road and pipeline to the approved Greater Mooses Tooth One (GMT1) development. The Supplemental EIS is being prepared for the purpose of supplementing the Alpine Satellite Development Plan (ASDP) Final EIS, dated September 2004, regarding the establishment of satellite oil production pads and associated infrastructure within the Alpine field.

DATES: Comments on relevant issues that will influence the scope of the supplemental EIS for the proposed GMT2 Development project may be submitted in writing until August 29, 2016. The BLM will provide opportunities for public participation upon publication of the Draft Supplemental EIS, including public meetings and a public comment period. Any Federal, state, or local agency or tribe that is interested in serving as a cooperating agency for the development of the Supplemental EIS are asked to submit such requests to the BLM by August 29, 2016.

ADDRESSES: You may submit comments until August 29, 2016 on issues related to the proposed GMT2 Development Project by any of the following methods:

- *Email: BLM_AK_GMT2_Comments@blm.gov.*
- *Fax:* 907–271–5479.
- *Mail:* GMT2 Scoping Comments, Bureau of Land Management, 222 West 7th Ave., Stop #13, Anchorage, AK 99513.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. You may examine documents pertinent to this proposal at the BLM Alaska Public Room, Fairbanks District Office, 1150 University Ave., Fairbanks, AK 99709, and at the BLM Alaska Public Information Center, Alaska State Office, 222 West 7th Ave., Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Stacie McIntosh, Arctic Field Office Manager, 907–474–2310, Bureau of Land Management, 1150 University Avenue, Fairbanks, AK 99709. Also contact Ms. McIntosh if you wish to add your name to the mailing list to receive further information about this project. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: On August 24, 2015, ConocoPhillips Alaska, Inc. (CPAI) submitted an Application for Permit to Drill (APD) an oil well and construct associated ancillary facilities to support up to 48 wells, including a production pad, pipeline, and road to facilitate development of petroleum resources within the Greater Mooses Tooth (GMT) Unit. The well site is named GMT2. The proposed project is located on Alaska's North Slope within the NPR–A, which encompasses approximately 22.8 million acres of public land. The project would facilitate production of oil from Federal and Alaska Native corporation lands within the NPR–A. The GMT2 project proposes a drill site on land currently managed by the BLM within the GMT Unit. This land is selected for conveyance by the Kuukpik Corporation, an Alaska Native corporation organized under the Alaska Native Claims Settlement Act of 1971 (ANCSA). The GMT2 site is approximately 15 miles west of the community of Nuiqsut. The associated pipeline and access road would traverse both Kuukpik Corporation lands and Federal lands within NPR–A for approximately 8.1 miles in a northeasterly direction to the Greater Mooses Tooth One (GMT1) development project, which was approved in February 2015 after its Final Supplemental EIS was completed in October 2014. At GMT1, the pipeline would connect to the approved GMT1 pipeline. From GMT1, produced oil, gas, and water would be carried via this pipeline across Kuukpik Corporation lands and Federal lands within the NPR–A, and across Alaska Native corporation lands and State of Alaska lands outside the NPR–A, to the Alpine Central Processing Facility (CD–1). Sales-quality crude would then be transported from CD–1 via pipeline to the Trans-Alaska Pipeline System.

CPAI proposes placement of 78 acres of fill material to construct the GMT2 drill pad, an approximately 8.1-mile-long gravel access road, and an 8.6-mile-long pipeline, which includes electrical and communication cables, from the GMT1 pad. Gravel required for construction of the drill site and road would be obtained from the Arctic Slope Regional Corporation (ASRC) mine site, an existing commercial gravel source located on the east side of the Colville River outside the boundary of the NPR–A, approximately 15 miles east of the proposed site. The proposed GMT2 pad would be approximately 14 acres in size, would eventually contain up to 48 individual wells, and would be operated and maintained by staff from CD–1, who would travel to the site via the gravel road.

The purpose of the Supplemental EIS is to evaluate new circumstances and information that have arisen since the ASDP Final EIS was issued in September 2004, as well as to address any changes in CPAI's proposed development plan for GMT2. A version of the GMT2 project was initially approved in the Record of Decision (ROD) under the 2004 ASDP Final EIS as site CD–7, and was included as reasonably foreseeable development in the 2012 NPR–A Integrated Activity Plan (IAP) EIS and the 2014 GMT1 Supplemental EIS. The GMT2 Supplemental EIS will address proposed changes to the previously approved design and location of the site, and any new information that could affect Federal permitting decisions.

New information includes data from ongoing multi-year studies on hydrology, birds, caribou, vegetation, wetlands, and subsistence use. In addition, since 2004, the study of climate change and its potential effects has advanced considerably, and new data resulting from this research will be included in the environmental analysis. The BLM adopted a new IAP for the NPR–A in February 2013, which contains updated protective measures. The polar bear was listed as threatened under the Endangered Species Act in 2008, and critical habitat has been proposed within the NPR–A.

The proposed GMT2 project is similar to the CD–7 project that was approved in the 2004 ASDP ROD, with several notable changes: A relocated drill site, increased road and pipeline length due to the relocation, and the elimination of overhead powerlines. In addition, the BLM is developing a Regional Mitigation Strategy that will help to guide the mitigation considerations in the GMT2 NEPA process.

At present, the BLM has identified the following preliminary issues for evaluation in the Supplemental EIS: Air quality; biological resources, including special status species; cultural resources; social impacts, including subsistence use and environmental justice; climate change effects; wetlands and other waters of the United States; and reasonably foreseeable future activities.

The BLM will use NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108), pursuant to 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to cultural resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with federally recognized Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given appropriate consideration. Federal, state, and local agencies and tribes that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the development of the environmental review as cooperating agencies.

Authority: 40 CFR 1502.9, 43 CFR part 3100

Ted Murphy,

Associate State Director.

[FR Doc. 2016–17962 Filed 7–28–16; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X.LLAKF02000.L16100000.DQ0000. LXSS094L0000]

Notice of Availability of the Eastern Interior Proposed Resource Management Plan/Final Environmental Impact Statement, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) for the Eastern Interior Planning Area in Alaska, in accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended. By this notice, the BLM is announcing the plan's availability.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest a Proposed RMP/Final EIS. A person who meets those regulatory conditions and wishes to file a protest, must file the protest within 30 days of the date that the U.S. Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: The BLM sent copies of the Eastern Interior Proposed RMP/Final EIS to affected Federal, State, and local government agencies, tribal governments, Alaska Native corporations, and other stakeholders. Copies of the Eastern Interior Proposed RMP/Final EIS are available for public inspection in both Fairbanks and Anchorage. You can view a copy at the BLM Fairbanks District Office, 222 University Avenue, Fairbanks, AK 99709, and at the BLM Alaska State Office, Public Information Center, 222 West 7th Avenue, Anchorage, AK 99513. You can also review a copy of the Eastern Interior Proposed RMP/Final EIS on the Internet at *www.blm.gov/ak/eirmp.*

All protests to the Eastern Interior Proposed RMP/Final EIS must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director; Attention: Protest Coordinator, WO–210; P.O. Box 71383; Washington, DC 20024–1383.

Overnight Delivery: BLM Director; Attention: Protest Coordinator, WO–210; 20 M Street SE., Room 2134LM; Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Jeanie Cole, BLM Planning and Environmental Coordinator, 907–474–2340, email *eastern_interior@blm.gov.***ADDRESS:** BLM Fairbanks District Office, 222 University Avenue, Fairbanks AK 99709. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Eastern Interior Proposed RMP/Final EIS covers approximately 6.5 million acres of BLM-administered lands in interior Alaska. The plan is divided into four subunits: The Fortymile, Steese, Upper Black River, and White Mountains subunits. BLM manages four areas in the planning area as National Conservation Lands (NCL): The Birch Creek, Beaver Creek, and Fortymile Wild and Scenic Rivers and the Steese National Conservation Area. In addition to the four NCL areas, the planning area includes the White Mountains National Recreation Area. The Alaska National Interest Lands Conservation Act of 1980, as amended (ANILCA), designated and applied special provisions for the four NCL areas and the White Mountains National Recreation Area.

The following BLM plans currently guide management decisions for 4 million acres of the planning area: Fortymile Management Framework Plan (1980), Fortymile River Management Plan (1983), Birch Creek River Management Plan (1983), Beaver Creek River Management Plan (1983), Steese National Conservation Area RMP and Record of Decision (ROD) (1986), and White Mountains National Recreation Area RMP and ROD (1986). No land use plans currently cover the remaining 2.5 million acres of the planning area, including the upper Black River area and scattered parcels along the highway system.

The Eastern Interior RMP will replace the Fortymile Management Framework Plan (1980), Steese National Conservation Area RMP (1986), and the White Mountains National Recreation Area RMP (1986). The Eastern Interior RMP will provide further direction for management of the three Wild and Scenic River planning areas.

Specifically, the three River Management Plans (Fortymile, Birch Creek, and Beaver Creek) will be evaluated for consistency with the Eastern Interior RMP and may be modified in the future through additional public engagement.

Following release of the Eastern Interior Proposed RMP/Final EIS, the BLM will prepare four RODs: One ROD for each of the four subunits within the planning area (Fortymile, Steese, White Mountains, and Upper Black River).

The EPA published a Notice of Availability for the Eastern Interior Draft RMP/Draft EIS in the **Federal Register** on March 2, 2012 (77 FR 12835), beginning a 150-day public comment period. Later, the 150-day comment period was extended pending publication of a supplemental EIS for the plan. The EPA published the Notice of Availability of the supplemental EIS, Hardrock Mineral Leasing in the White Mountains National Recreation Area for the Eastern Interior Draft RMP (Supplement), in the **Federal Register** on January 11, 2013 (78 FR 2397). That notice began a 90-day public comment period on the Supplement. The comment period for both the Eastern Interior Draft RMP/Draft EIS and the Hardrock Mineral Leasing Supplement closed on April 11, 2013.

On January 2, 2015, the **Federal Register** published the BLM's Notice of Availability of Additional Information on Proposed Areas of Critical Environmental Concern (ACECs) (80 FR 52). The additional information about the proposed Mosquito Flats ACEC described what resource use limitations would occur if it were designated in the approved Eastern Interior RMP/Final EIS. The January 2, 2015, **Federal Register** notice started a 60-day comment period on the proposed ACECs. That comment period closed on March 3, 2015.

The Eastern Interior Proposed RMP/Final EIS presents five alternatives, including the No Action Alternative. The BLM's Alternative E (Proposed RMP) balances the level of protection, use, and enhancement of resources and services for the planning area. The BLM believes the Proposed RMP represents the best mix and variety of actions to resolve issues and management concerns in consideration of all resource values and programs. Pursuant to 43 CFR 1610.7–2, the BLM considers areas with potential for designation as ACECs and protective management during its planning processes. The Eastern Interior Proposed RMP/Final EIS considers the designation of five potential ACECs. Boundaries, size, and management direction within potential ACECs vary by Alternative. Of the five potential ACECs, Table 1 lists the three ACECs the BLM is considering for designation in the Proposed RMP. All alternatives considered in the plan will retain the four existing Research Natural Areas.

TABLE 1—PROPOSED ACECS UNDER THE EASTERN INTERIOR ALTERNATIVE E (PROPOSED RMP)

Proposed ACEC name	Acres	Limitations
Fortymile ACEC	362,000	Limited off-highway vehicle (OHV) designation; summer OHV use only on approved routes; limit trail density; winter motorized use in Dall sheep habitat may be restricted if monitoring indicates sheep displacement; seasonal limitation on uses within one mile of ungulate mineral licks; closed to mineral leasing; recommended closed to locatable mineral location and entry.
Mosquito Flats ACEC	37,000	Limited OHV designation; winter motorized use allowed, but may be restricted if monitoring indicates degradation of wetlands; summer OHV use by permit only; closed to mineral leasing; recommended closed to locatable mineral location and entry; limit permitted uses and facility development to those which would not degrade wetlands.
Salmon Fork ACEC	623,000	Limited OHV designation; maintain water quality to support nesting bald eagles and salmon habitat; minimize impacts on rare flora; closed to mineral leasing; recommended closed to mineral location and entry.

The Eastern Interior Proposed RMP/Final EIS considers and incorporates comments that the BLM received on the Eastern Interior Draft RMP/Draft EIS, the Supplement, and the Notice of Availability of information about the ACECs from the public and through internal BLM and cooperating agency reviews, as appropriate. The addition of Alternative E (Proposed RMP) and minor clarifications to text and maps in the Eastern Interior Proposed RMP/Final EIS resulted from these comments. Alternative E (Proposed RMP) combines planning decisions from different alternatives analyzed in the Eastern Interior Draft RMP/Draft EIS, and is qualitatively within the spectrum of alternatives analyzed in that Draft RMP/Draft EIS.

Instructions to file a protest with the Director of the BLM regarding the Eastern Interior Proposed RMP/Final EIS are in the "Dear Reader" Letter of the Eastern Interior Proposed RMP/Final EIS and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail, postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *protest@blm.gov*.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5

Ted Murphy,

Associate State Director.

[FR Doc. 2016–17963 Filed 7–28–16; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[COF000–LLCOF00000–PO0000–L19900000]

Notice of Meeting, Front Range Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on Aug. 19, 2016, from 9:00 a.m. to 4:00 p.m. A field trip will occur on Aug. 18, 2016 from 9:00 a.m. to 4:30 p.m.

ADDRESSES: The field trip will meet at the Collegiate Peaks Overlook, County Road 304, Buena Vista, CO 81211. The meeting will be held at the SteamPlant Event Center, 220 West Sackett Ave., Salida, CO 81201.

FOR FURTHER INFORMATION CONTACT: Kyle Sullivan, Front Range RAC Coordinator, BLM Front Range District Office, 3028 E. Main St., Cañon City, CO 81212. Phone: (719) 269–8553. Email: *ksullivan@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM Front Range District, which includes the Royal Gorge and the San Luis Valley field offices in Colorado. Planned topics of discussion items include: overview of BLM's Connecting with Communities strategy, fee proposal for Guffey Gorge, fee proposal for Cache Creek, an update from field managers and an update on the Eastern Colorado Office Resource Management Plan revision status. The public is encouraged to make oral comments to the Council at 1:00 p.m. on Aug. 19 or submit written statements for the Council's consideration. Summary minutes for the RAC meetings will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Previous meeting minutes and agendas are available at: *www.blm.gov/co/st/en/BLM_Resources/racs/frrac/co_rac_minutes_front.html.*

Ruth Welch,

Colorado State Director.

[FR Doc. 2016–17747 Filed 7–28–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMA00000 L12200000.DF0000 16X]

Notice of Public Meeting, Albuquerque District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management (BLM), Albuquerque District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet on Thursday, August 25, 2016, at the Albuquerque District Office, 100 Sun Avenue Northeast, Pan American Building, Suite 330, Albuquerque, New Mexico, from 9:30 a.m.–4 p.m.. The public may send written comments to the RAC at the BLM Albuquerque District Office, 100 Sun Avenue Northeast, Pan American Building, Suite 330, Albuquerque, NM 87109.

FOR FURTHER INFORMATION CONTACT: Carlos Coontz, 575–838–1263, BLM Socorro Field Office, 901 South Highway 85, Socorro, NM 87101. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Albuquerque District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in New Mexico's Albuquerque District.

Planned agenda items include updates on the 2016 RAC charter renewal; the second call for nominations; a Rio Puerco Field Office resource update and Assistant Field Manager introductions; a Socorro Field Office resource update and Assistant Field Manager Introduction; and a fee proposal presentation for U.S. Forest Service recreation sites. There will also be a discussion on Planning 2.0, and time for the RAC to have open discussion.

A half-hour comment period during which the public may address the RAC will begin at 11 a.m. All RAC meetings are open to the public. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

Sally Butts,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2016–17953 Filed 7–28–16; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–770–773 and 775 (Third Review)]

Stainless Steel Wire Rod From Italy, Japan, Korea, Spain, and Taiwan; Determination

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the antidumping duty orders on stainless steel wire rod from Japan, Korea, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[2] The Commission further determines that revocation of the antidumping duty orders on stainless steel wire rod from Italy and Spain would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[3]

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] All six Commissioners voted in the affirmative with respect to imports from Japan, Korea, and Taiwan.

[3] All six Commissioners voted in the negative with respect to imports from Spain. Chairman Williamson and Commissioners Johanson, Broadbent, and Kieff voted in the negative with respect to imports from Italy; Commissioners

Continued

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on May 1, 2015 (80 FR 24970 May 1, 2015) and determined on August 12, 2015 that it would conduct full reviews (80 FR 48336 August 12, 2015). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 13, 2016 (81 FR 1642). The hearing was held in Washington, DC, on May 18, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on July 25, 2016. The views of the Commission are contained in USITC Publication 4623 (July 2016), entitled *Stainless Steel Wire Rod from Italy, Japan, Korea, Spain, and Taiwan* (Inv. Nos. 731–TA–770–773 and 775 (Third Review)).

By order of the Commission.

Issued: July 25, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–17914 Filed 7–28–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–027]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: August 12, 2016 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. No. 731–TA–1330 (Preliminary) (Dioctyl Terephthalate (DOTP) from Korea). The Commission is currently scheduled to complete and file its determination on August 15, 2016; views of the Commission are currently scheduled to be completed and filed on August 22, 2016.
5. Vote in Inv. Nos. 701–TA–563 and 731–TA–1331–1333 (Preliminary) (Finished Carbon Steel Flanges from India, Italy, and Spain). The Commission is currently scheduled to complete and file its determinations on August 15, 2016; views of the Commission are currently scheduled to be completed and filed on August 22, 2016.
6. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 26, 2016.

Katherine M. Hiner,

Acting Supervisory Attorney.

[FR Doc. 2016–18086 Filed 7–27–16; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1720]

Meeting of the Public Safety Officer Medal of Valor Review Board

AGENCY: Office of Justice Programs, Bureau of Justice Assistance.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting (held via conference call) of the Public Safety Officer Medal of Valor Review Board, primarily intended to consider nominations for the 2015–2016 Medal of Valor, and to make a limited number of recommendation for submission to the U.S. Attorney General. Additional issues of importance to the Board will also be discussed, to include but not limited to the reading into the record of the minutes from the June 6, 2016, board meeting/conference call. The meeting/conference call date and time is listed below.

DATES: Wednesday, September 7, 2016, from 9:00 a.m. to 12:00 p.m. (EST)

ADDRESSES: The public may hear the proceedings of this meeting/conference call at the Office of Justice Programs, 810 7th Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Gregory Joy, Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, at (202) 514–1369, toll free (866) 859–2687, or by email at *Gregory.joy@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Public Safety Officer Medal of Valor Review Board carries out those advisory functions specified in 42 U.S.C. 15202. Pursuant to 42 U.S.C. 15201, the President of the United States is authorized to award the Public Safety Officer Medal of Valor, the highest national award for valor by a public safety officer. This meeting is open to the public at the Office of Justice Programs. For security purposes, members of the public who wish to participate must register at least seven (7) days in advance of the meeting/conference call by contacting Mr. Joy. All interested participants will be required to meet at the Bureau of Justice Assistance, Office of Justice Programs; 810 7th Street NW., Washington, DC, and will be required to sign in at the front desk. **Note:** Photo identification will be required for admission. Additional identification documents may be required.

Access to the meeting will not be allowed without prior registration. Anyone requiring special accommodations should contact Mr. Joy at least seven (7) days in advance of the meeting. Please submit in writing, any comments or statements for consideration by the Review Board, at least seven (7) days in advance of the meeting date.

Gregory Joy,

Policy Advisor/Designated Federal Officer, Bureau of Justice Assistance.

[FR Doc. 2016–18043 Filed 7–28–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1700]

Meeting of the Office of Justice Programs' Science Advisory Board

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of OJP's Science Advisory Board ("the Board"). This meeting is scheduled for September 15–16, 2016. General Function of the Board: The Board is chartered to provide OJP, a component of the Department of Justice, with valuable advice in the areas of science and statistics for the purpose of enhancing the overall impact and performance of its programs and activities in criminal and juvenile justice.

Pinkert and Schmidtlein voted in the affirmative with respect to imports from Italy.

DATES: The meeting will take place on Thursday, September 15, 2016, from approximately 3 p.m. to 5 p.m., and on Friday, September 16 from approximately 9 a.m. to 3 p.m., with a break for lunch at approximately 12:00 p.m.

ADDRESSES: The meeting will take place in the Main Conference Room on the third floor of the Office of Justice Programs, 810 7th Street Northwest, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Katherine Darke Schmitt, Designated Federal Officer (DFO), Office of the Assistant Attorney General, Office of Justice Programs, 810 7th Street Northwest, Washington, DC 20531; Phone: (202) 616–7373 [**Note:** This is not a toll-free number]; Email: *katherine.darke@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is being convened to brief the OJP Assistant Attorney General and the Board members on the progress of the subcommittees, discuss any recommendations they may have for consideration by the full Board, and brief the Board on various OJP-related projects and activities. The final agenda is subject to adjustment, but the meeting will likely include briefings of the subcommittees' activities and discussion of future Board actions and priorities. This meeting is open to the public. Members of the public who wish to attend this meeting must register with Katherine Darke Schmitt at the above address at least seven (7) calendar days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. Persons interested in communicating with the Board should submit their written comments to the DFO, as the time available will not allow the public to directly address the Board at the meeting. Anyone requiring special accommodations should notify Ms. Darke Schmitt at least seven (7) calendar days in advance of the meeting.

Katherine Darke Schmitt,

Senior Policy Advisor and SAB DFO, Office of the Assistant Attorney General, Office of Justice Programs.

[FR Doc. 2016–17890 Filed 7–28–16; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Issuance of Insurance Policy

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, "Notice of Issuance of Insurance Policy," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before August 29, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201603-1240-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Notice of Issuance of Insurance Policy information collection. The Black Lung Benefits Act as amended requires that a responsible coal mine operator be insured and outlines the items each contract of insurance must contain. *See* 30 U.S.C. 933. The statute also enumerates civil penalties to which a responsible coal mine operator is subject, should these procedures not be followed. Regulations 20 CFR 726.208 through 726.213 require that each insurance carrier shall report to Division of Coal Mine Workers' Compensation (DCMWC) each policy and endorsement issued, cancelled, or renewed with respect to responsible operators. The regulations state that this report will be made in such a manner and on such a form as the DCMWC may require. The regulations also require that, if a policy is issued or renewed for more than one operator, a separate report for each operator shall be submitted. The insured coal mining operations are conducted in States that report all workers' compensation to the National Council on Compensation Insurance (NCCI). The OWCP and NCCI have a Memorandum of Understanding in place that permits the NCCI to provide policy information directly to the OWCP via Secure File Transfer Protocol server. This information collection has been classified as a revision, because will discontinue use of Form CM–921 that a State previously has used to submit information directly to the DCMWC.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0048. The current approval is scheduled to expire on July 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 21, 2016 (81 FR 3477).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0048. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Notice of Issuance of Insurance Policy.

OMB Control Number: 1240–0048.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 3,500.

Total Estimated Number of Responses: 3,500.

Total Estimated Annual Time Burden: 58 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: July 25, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–17977 Filed 7–28–16; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Brookwood-Sago Mine Safety Grants

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Funding Opportunity Announcement (FOA).

Announcement Type: New.

Funding Opportunity Number: FOA 16–3BS.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.603.

SUMMARY: The U.S. Department of Labor (DOL), Mine Safety and Health Administration (MSHA), is making up to $1,000,000 available in grant funds for education and training programs to help identify, avoid, and prevent unsafe working conditions in and around mines. The focus of these grants for Fiscal Year (FY) 2016 will be on training and training materials for mine emergency preparedness and mine emergency prevention for all underground mines. Applicants for the grants may be States and nonprofit (private or public) entities, including U.S. territories, Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations. MSHA could award as many as 20 grants. The amount of each individual grant will be at least $50,000.00 and the maximum individual award will be $250,000. This notice contains all of the information needed to apply for grant funding.

DATES: The closing date for applications will be September 9, 2016, (no later than 11:59 p.m. EDST). MSHA will award grants on or before September 30, 2016.

ADDRESSES: Grant applications for this competition must be submitted electronically through the *Grants.gov* site at *www.grants.gov*. If applying online poses a hardship to any applicant, the MSHA Directorate of Educational Policy and Development will provide assistance to help applicants submit online.

FOR FURTHER INFORMATION CONTACT: Any questions regarding this FOA 16–3BS should be directed to Janice Oates at *oates.janice@dol.gov* or 202–693–9573 (this is not a toll-free number) or Krystle Mitchell at *Mitchell.Krystle@dol.gov* or 202–693–9570 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This solicitation provides background information and the requirements for projects funded under the solicitation. This solicitation consists of eight parts:

- Part I provides background information on the Brookwood-Sago grants.
- Part II describes the size and nature of the anticipated awards.
- Part III describes the qualifications of an eligible applicant.
- Part IV provides information on the application and submission process.
- Part V explains the review process and rating criteria that will be used to evaluate the applications.
- Part VI provides award administration information.
- Part VII contains MSHA contact information.
- Part VIII addresses Office of Management and Budget (OMB) information collection requirements.

I. Program Description

A. Overview of the Brookwood-Sago Mine Safety Grant Program

Responding to several coal mine disasters, Congress enacted the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). When Congress passed the MINER Act, it expected that requirements for new and advanced technology, *e.g.*, fire-resistant lifelines and increased breathable air availability in escapeways, would increase safety in mines. The MINER Act also required that every underground coal mine have persons trained in emergency response. Congress emphasized its commitment to training for mine emergencies when it strengthened the requirements for the training of mine rescue teams. Recent events demonstrate that training is the key for proper and safe emergency response and that all miners working in underground mines should be trained in emergency response.

Under Section 14 of the MINER Act, the Secretary of Labor (Secretary) is required to establish a competitive grant program called the "Brookwood-Sago Mine Safety Grants" (Brookwood-Sago grants). 30 U.S.C. 965. This program provides funding for education and training programs to better identify, avoid, and prevent unsafe working conditions in and around mines. This program will use grant funds to establish and implement education and training programs or to create training materials and programs. The MINER Act requires the Secretary to give priority to mine safety demonstrations and pilot projects with broad applicability. It also mandates that the Secretary emphasize programs and materials that target miners in smaller mines, including training mine operators and miners on new MSHA standards, high-risk activities, and other identified safety priorities.

B. Education and Training Program Priorities

MSHA priorities for the FY 2016 funding of the annual Brookwood-Sago grants will focus on training or training materials for mine emergency preparedness and mine emergency prevention for all underground mines. MSHA expects Brookwood-Sago grantees to develop training materials or to develop and provide mine safety training or educational programs, recruit mine operators and miners for the training, and conduct and evaluate the training.

MSHA expects Brookwood-Sago grantees to conduct follow-up evaluations with the people who received training in their programs to measure how the training promotes the Secretary's goal to "improve workplace safety and health" and MSHA's goal to "prevent death, disease and injury from mining and promote safe and healthful workplaces for the Nation's miners." Evaluations will focus on determining how effective their training was in either reducing hazards, improving skills for the selected training topics, or in improving the conditions in mines. Grantees must also cooperate fully with MSHA evaluators of their programs.

II. Federal Award Information

A. Award Amount for FY 2016

MSHA is providing up to $1,000,000 for the 2016 Brookwood-Sago grant program which could be awarded in a maximum of 20 separate grants of no less than $50,000 each. Applicants requesting less than $50,000 or more than $250,000 for a 12-month performance period will not be considered for funding.

B. Period of Performance

MSHA may approve a request for a one time no-cost extension to grantees for an additional period from the expiration date of the annual award based on the success of the project and other relevant factors. See 2 CFR 200.308(d)(2).

III. Eligibility Information

A. Eligible Applicants

Applicants for the grants may be States and nonprofit (private or public) entities, including U.S. territories, Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations. Eligible entities may apply for funding independently or in partnership with other eligible organizations. For partnerships, a lead organization must be identified.

Applicants other than States (including U.S. territories) and State-supported or local government-supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service (IRS). A nonprofit entity as described in 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible for a grant award. See 2 U.S.C. 1611.

B. Legal Rules Pertaining to Inherently Religious Activities by Organizations That Receive Federal Financial Assistance

The government generally is prohibited from providing direct Federal financial assistance for inherently religious activities. See 29 CFR part 2, subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of contractors and subcontractors.

C. Cost-Sharing or Matching

Cost-sharing or matching of funds is not required for eligibility.

IV. Application and Submission Information

A. Application Forms

This announcement includes all information and links needed to apply for this funding opportunity. The full application is available through the *Grants.gov* Web site, *www.grants.gov.* Click the "Applicants" tab, then click "Apply for Grants". The Catalog of Federal Domestic Assistance (CFDA) number needed to locate the appropriate application for this opportunity is 17.603. If an applicant has problems downloading the application package from *Grants.gov,* contact the *Grants.gov* Contact Center at 1–800–518–4726 or by email at *support@grants.gov.*

The full application package is also available online at *www.msha.gov:* Select "Training and Education," click on "Training Programs and Courses," then select "Brookwood-Sago Mine Safety Grants". This Web site also includes all forms and all regulations that are referenced in this FOA. Applicants, however, must apply for this funding opportunity through the *Grants.gov* Web site. You may request paper copies of the package by contacting the Directorate of Educational Policy and Development at 202–693–9570.

B. Content and Form of the FY 2016 Application

Each grant application must address mine emergency preparedness or mine emergency prevention for underground mines. The application must consist of three separate and distinct sections. The three required sections are:

- Section 1—Project Forms and Financial Plan (No page limit).
- Section 2—Executive Summary (Not to exceed two pages).
- Section 3—Technical Proposal (Not to exceed 12 pages). Illustrative material can be submitted as an attachment.

The following are mandatory requirements for each section.

1. Project Forms and Financial Plan

This section contains the forms and budget section of the application. The Project Financial Plan will not count against the application page limits. A person with authority to bind the applicant must sign the grant application and forms. Applications submitted electronically through *Grants.gov* do not need to be signed manually; electronic signatures will be accepted.

(a) Completed SF–424, "Application for Federal Assistance,"(OMB No. 4040–0004, expiration: 8/31/2016). This form is part of the application package on *Grants.gov* and is also available at *www.msha.gov:* (Select "Training and Education," click on "Training Programs and Courses," then select "Brookwood-Sago Mine Safety Grants.") The SF–424 must identify the applicant clearly and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall be considered the representative of the applicant.

Completed SF–424A, "Budget Information for Non-Construction Programs," (OMB No. 4040–0006, expiration: 01/31/2019). The project budget should demonstrate clearly that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the applicant in its proposal, and must comply with the Federal cost principles and the administrative requirements set forth in this FOA. (Copies of all regulations that are referenced in this FOA are available online at *www.msha.gov.* (Select "Training and Education," click on "Training Programs and Courses," then select "Brookwood-Sago Mine Safety Grants.")

(b) Budget Narrative. The applicant must provide a concise narrative explaining the request for funds. The budget narrative should separately attribute the Federal funds to each of the activities specified in the technical proposal and it should discuss precisely how any administrative costs support the project goals.

If applicable, the applicant must provide a statement about its program income. See 2 CFR 200.80 and 200.307 and this FOA, Part IV.F.1(a) and (b).

The amount of Federal funding requested for the entire period of performance must be shown on the SF–424 and SF–424A forms.

(d) Completed SF–424B, "Assurances for Non-Construction Programs," (OMB No. 4040–0007, expiration: 01/31/2019). Each applicant for these grants must certify compliance with a list of assurances. This form is part of the application package on *www.grants.gov* and also is available at *www.msha.gov:* (Select "Training and Education," click on "Training Programs and Courses," then select "Brookwood-Sago Mine Safety Grants.")

(e) Supplemental Certification Regarding Lobbying Activities Form. If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of a grant or cooperative agreement, the applicant shall complete and submit SF–LLL, "Disclosure Form to Report Lobbying,"(OMB No. 4040–0013, expiration: 01/31/2019) in accordance with its instructions. This form is part of the application package on *www.grants.gov* and is also available at *www.msha.gov:* (Select "Training and Education," click on "Training Programs and Courses," then select "Brookwood-Sago Mine Safety Grants.")

(f) Non-profit status. Applicants must provide evidence of non-profit status, preferably from the IRS, if applicable.

(g) Accounting System Certification. Under the authority of 2 CFR 200.207, MSHA requires that a new applicant that receives less than $1 million annually in Federal grants attach a certification stating that the organization (directly or through a designated qualified entity) has a functioning accounting system that meets the criteria below. The certification should attest that the organization's accounting system provides for the following:

(1) Accurate, current, and complete disclosure of the financial results of each federally sponsored project.

(2) Records that adequately identify the source and application of funds for federally sponsored activities.

(3) Effective control over and accountability for all funds, property, and other assets.

(4) Comparison of outlays with budget amounts.

(5) Written procedures to minimize the time elapsing between transfers of funds.

(6) Written procedures for determining the reasonableness, allocability, and allowability of costs.

(7) Accounting records, including cost accounting records that are supported by source documentation.

(h) Attachments. The application may include attachments such as resumes of key personnel or position descriptions, exhibits, information on prior government grants, and signed letters of commitment to the project.

2. Executive Summary

The executive summary is a short one-to-two page abstract that succinctly summarizes the proposed project. MSHA will publish, as submitted, all grantees' executive summaries on the DOL Web site. The executive summary must include the following information:

(a) Applicant. Provide the organization's full legal name and address.

(b) Funding requested. List how much Federal funding is being requested.

(c) Grant Topic. List the grant topic and the location and number of mine operators and miners that the organization has selected to train or describe the training materials or equipment to be created with these funds.

(d) Program Structure. Identify the type of grant as "annual."

(e) Summary of the Proposed Project. Write a brief summary of the proposed project. This summary must identify the key points of the proposal, including an introduction describing the project activities and the expected results.

3. Technical Proposal

The technical proposal must demonstrate the applicant's capabilities to plan and implement a project or create educational materials to meet the objectives of this solicitation. MSHA's focus for these grants is on training mine operators and miners and developing training materials for mine emergency preparedness or mine emergency prevention for underground mines. A Department of Labor Strategic Goal is to "improve workplace safety and health". MSHA has a performance goal to "prevent death, disease, and injury from mining and promote safe and healthful workplaces for the Nation's miners" and supporting strategies to "strengthen and modernize training and education" and "improve mine emergency response preparedness." MSHA's award of the Brookwood-Sago grants supports these goals and strategies. To show how the grant projects promote these goals and strategies, grantees must report, on a quarterly basis, the following information (as applicable):

Number of trainers trained
Number of mine operators and miners trained
Number trained as responsible persons
Number of persons trained in smoke
Number of training events
Number of course days of training provided to industry
Course evaluations of trainer and training material
Description of training materials created, to include target audience, goals and objectives, and usability in the mine training environment

The technical proposal narrative must not exceed 12 single-sided, double-spaced pages, using 12-point font, and must contain the following sections: Program Design, Overall Qualifications of the Applicant, and Output and Evaluation. Any pages over the 12-page limit will not be reviewed. Attachments to the technical proposal are not counted toward the 12-page limit. Major sections and sub-sections of the proposal should be divided and clearly identified. As required in Part VIII subpart B "Transparency," a grantee's final technical proposal will be posted "as is" on MSHA's Web site unless MSHA receives a version redacting any proprietary, confidential business, or personally identifiable information no later than two weeks after receipt of the Notice of Award.

MSHA will review and rate the technical proposal in accordance with the selection criteria specified in Part V.

(a) Program Design

(1) Statement of the Problem/Need for Funds. Applicants must identify a clear and specific need for proposed activities. They must identify whether they are providing a training program, creating training materials, or both. Applicants also must identify the number of individuals expected to benefit from their training and education program; this should include identifying the type of underground mines, the geographic locations of the training, and the number of mine operators and miners.

(2) Quality of the Project Design. MSHA requires that each applicant include a 12-month workplan that correlates with the grant project period that will begin no later than September 30, 2016 and end no later than September 29, 2017.

(i) Plan Overview

Describe the plan for grant activities and the anticipated results. The plan should describe such things as the development of training materials, the training content, recruiting of trainees, where or how training will take place, and the anticipated benefits to mine operators and miners receiving the training.

(ii) Activities

Break the plan down into activities or tasks. For each activity, explain what will be done, who will do it, when it will be done, and the anticipated results of the activity. For training, discuss the subjects to be taught, the length of the training sessions, type of training (*e.g.,* Mine Emergency Response Development exercise), and training locations (*e.g.,* classroom, worksites). Describe how the applicant will recruit mine operators and miners for the training. (Note: Any commercially developed training materials the applicant proposes to use in its training must undergo an MSHA review before being used).

(iii) Quarterly Projections

For training and other quantifiable activities, estimate the quantities involved for data required to meet the grant goals located in Part IV.B.3. For example, estimate how many classes will be conducted and how many mine operators and miners will be trained each quarter of the grant (grant quarters match calendar quarters, *i.e.,* January to March, April to June, July to September, and October to December); except the first quarter is the date of award to the end of that calendar quarter). Also, provide the training number totals for the full year. Quarterly projections are used to measure the actual performance against the plan. Applicants planning to conduct a train-the-trainer program should estimate the number of individuals to be trained during the grant period by those who received the train-the-trainer training. These second-tier training numbers should be included only if the organization is planning to follow up with the trainers to obtain this data during the grant period.

(iv) Materials

Describe each educational material to be produced under this grant. Provide a timetable for developing and producing the material. The timetable must include provisions for an MSHA review of draft and camera-ready products or evaluation of equipment. MSHA must review and approve training materials or equipment for technical accuracy and suitability of content before use in the grant program. Whether or not an applicant's project is to develop training materials only, the applicant should provide an overall plan that includes time for MSHA to review any materials produced.

(b) Qualifications of the Applicant

(1) Applicant's Background

Describe the applicant, including its mission, and a description of its membership, if any. Provide an organizational chart (the chart may be included as a separate page which will not count toward the page limit). Identify the following:

(i) Project Director

The Project Director is the person who will be responsible for the day-to-day operation and administration of the program. Provide the name, title, street address and mailing address (if it is different from the organization's street address), telephone and fax numbers, and email address of the Project Director.

(ii) Certifying Representative

The Certifying Representative is the official in the organization who is authorized to enter into grant agreements. Provide the name, title, street address and mailing address (if it is different from the organization's street address), telephone and fax numbers, and email address of the Certifying Representative.

(2) Administrative and Program Capability

Briefly describe the organization's functions and activities, *i.e.,* the applicant's management and internal controls. Relate this description of functions to the organizational chart. If the applicant has received any other government (Federal, State or local) grant funding, the application must have, as an attachment (which will not count towards the page limit), information regarding these previous grants. This information must include each organization for which the work was done and the dollar value of each grant. If the applicant does not have previous grant experience, it may partner with an organization that has grant experience to manage the grant. If the organization uses this approach, the management organization must be identified and its grant program experience discussed. Lack of past experience with Federal grants is not a determining factor, but an applicant should show a successful experience relevant to the opportunity offered in the application. Such experience could include staff members' experiences with other organizations.

(3) Program Experience

Describe the organization's experience conducting the proposed mine training program or other relevant experience. Include program specifics such as program title, numbers trained, and duration of training. If creating training materials, include the title of other materials developed. Nonprofit organizations, including community-based and faith-based organizations that do not have prior experience in mine safety may partner with an established mine safety organization to acquire safety expertise.

(4) Staff Experience

Describe the qualifications of the professional staff you will assign to the program. Attach resumes of staff already employed (resumes will not count towards the page limit). If some positions are vacant, include position descriptions and minimum hiring qualifications instead of resumes. Staff should have, at a minimum, mine safety experience, training experience, or experience working with the mining community.

(c) Outputs and Evaluations

There are two types of evaluations that must be conducted. First, describe the methods, approaches, or plans to evaluate the training sessions or training materials to meet the data requirements in Part IV.B.3. Second, describe plans to assess the long-term effectiveness of the training materials or training conducted. The type of training given will determine whether the evaluation should include a process-related outcome or a result-related outcome or both. This will involve following up with an evaluation, or on-site review, if feasible, of miners trained. The evaluation should focus on what changes the trained miners made to abate hazards and improve workplace conditions, or to incorporate this training in the workplace, or both.

For training materials, include an evaluation from individuals trained on the clarity of the presentation, organization, and the quality of the information provided on the subject matter and whether they would continue to use the training materials. Include timetables for follow-up and for submitting a summary of the assessment results to MSHA.

C. Dun and Bradstreet Universal Numbering System (DUNS) Number and System for Award Management (SAM)-Required

Under 2 CFR 25.200(b)(3), every applicant for a Federal grant is required to include a DUNS number with its application. The DUNS number is a nine-digit identification number that uniquely identifies business entities. An applicant's DUNS number is to be entered into Block 8 of Standard Form (SF) 424. There is no charge for obtaining a DUNS number. To obtain a DUNS number, call 1–866–705–5711 or access the following Web site: *http://fedgov.dnb.com/webform.*

After receiving a DUNS number, all grant applicants must register as a vendor with the System for Award Management (SAM) through the Web site *www.sam.gov.* Grant applicants must create a user account and register online. Submitted registrations will take up to 10 business days to process, after which the applicant will receive an email notice that the registration is active. Once the registration is active in SAM it takes an additional 24–48 hours for the registration to be active in *Grants.gov.* SAM registrations must be renewed annually. SAM will send notifications to the registered user via email prior to expiration of the registration. Under 2 CFR 25.200(b)(2), each grant applicant must maintain an active registration with current information at all times during which it has an active Federal award or an application under active consideration.

D. Submission Date, Times, and Addresses

The closing date for applications will be September 9, 2016, (no later than 11:59 p.m. EDST). MSHA will award grants on or before September 30, 2016.

Grant applications must be submitted electronically through the *Grants.gov* Web site. The *Grants.gov* site provides all the information about submitting an application electronically through the site as well as the hours of operation. Interested parties can locate the downloadable application package by the CFDA No. 17.603.

1. Non-Compliant Applications

(a) Applications that are lacking any of the required elements or do not follow the format prescribed in IV.B. will not be reviewed.

(b) Late Applications

You are cautioned that applications should be submitted before the deadline to ensure that the risk of late receipt of the application is minimized.

Applications received after the deadline will not be reviewed unless it is determined to be in the best interest of the Government.

Applications received by *Grants.gov* are date and time stamped electronically. Once an interested party has submitted an application, *Grants.gov* will notify the interested party with three emails: (1) An automatic notification of receipt that provides the applicant with a tracking number, (2) a notification that informs applicants that the application has been validated by *Grants.gov* and is being prepared for Agency retrieval, and (3) a notification that the DOL E-Grants system has received the application from *Grants.gov* (the application is ready for Agency review).

An application must be fully uploaded and validated by the *Grants.gov* system before the application deadline date.

E. Intergovernmental Review

The Brookwood-Sago grants are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." MSHA; however, reminds applicants that if they are not operating MSHA-approved State training grants, they should contact the State grantees and coordinate any training or educational program. Information about each state grant and the entity operating the state grant is provided online at: *www.msha.gov/TRAINING/STATES/STATES.asp.*

F. Funding Restrictions

MSHA will determine whether costs are allowable under the applicable Federal cost principles and other conditions contained in the grant award.

1. Allowable Costs

Grant funds may be spent on conducting training and outreach, developing educational materials, recruiting activities (to increase the number of participants in the program), and on necessary expenses to support these activities. Allowable costs are determined by the applicable Federal cost principles identified in Part VI.B, which are attachments in the application package, or are located online at *www.msha.gov:* (Select "Training and Education", click on "Training Programs and Courses", then select "Brookwood-Sago Mine Safety Grants.") Paper copies of the material may be obtained by contacting the Directorate of Educational Policy and Development at 202–693–9570.

(a) If an applicant anticipates earning program income during the grant period, the application must include an estimate of the income that will be earned. Program income earned must be reported on a quarterly basis.

(b) Program income is gross income earned by the grantee which is directly generated by a supported activity, or earned as a result of the award. Program income earned during the award period shall be retained by the recipient, added to funds committed to the award, and used for the purposes and under the conditions applicable to the use of the grant funds. See 2 CFR 200.80 and 200.307.

2. Unallowable Costs

Grant funds may not be used for the following activities under this grant program:

(a) Any activity inconsistent with the goals and objectives of this FOA

(b) Training on topics that are not targeted under this FOA

(c) Purchasing any equipment unless pre-approved and in writing by the MSHA grant officer

(d) Direct administrative costs that exceed 15% of the total grant budget

(e) Indirect costs that exceed 10% of the modified total direct costs (as defined in 2 CFR 200.68) or the grantee's federally negotiated indirect cost rate reimbursement

(f) Any pre-award costs

Unallowable costs also include any cost determined by MSHA as not allowed according to the applicable cost principles or other conditions in the grant.

V. Application Review Information for FY 2016 Grants

A. Evaluation Criteria

MSHA will screen all applications to determine whether all required proposal elements are present and clearly identifiable. Those that do not comply with mandatory requirements will not be evaluated. The technical panels will review grant applications using the following criteria:

1. Program Design—40 Points Total

(a) Statement of the Problem/Need for Funds (3 Points)

The proposed training and education program or training materials must address either mine emergency preparedness or mine emergency prevention.

(b) Quality of the Project Design (25 Points)

(1) The proposal to train mine operators and miners clearly estimates the number to be trained and clearly identifies the types of mine operators and miners to be trained.

(2) If the proposal contains a train-the-trainer program, the following information must be provided:

- Name or type of support the grantee will provide to new trainers
- The number of individuals to be trained as trainers
- The estimated number of courses to be conducted by the new trainers

- The estimated number of students to be trained by these new trainers and a description of how the grantee will obtain data from the new trainers documenting their classes and student numbers if conducted during the grant period

(3) The work plan activities and training are described.

- The planned activities and training are tailored to the needs and levels of the mine operators and miners to be trained. Any special constituency to be served through the grant program is described, *e.g.*, smaller mines, limited English proficiency miners, etc. Organizations proposing to develop materials in languages other than English also will be required to provide an English version of the materials.
- If the proposal includes developing training materials, the work plan must include time during development for MSHA to review the educational materials for technical accuracy and suitability of content. If commercially developed training products will be used for a training program, applicants should also plan for MSHA to review the materials before using the products in their grant programs.
- The utility of the educational materials is described.
- The outreach or process to find mine operators, miners, or trainees to receive the training is described.

(c) Replication (4 Points)

The potential for a project to serve a variety of mine operators, miners, or mine sites, or the extent others may replicate the project.

(d) Innovation (3 Points)

The originality and uniqueness of the approach used.

(e) MSHA's Performance Goals (5 Points)

The extent the proposed project will contribute to MSHA's performance goals.

2. Budget—20 Points Total

(a) The budget presentation is clear and detailed. (15 points)

The budgeted costs are reasonable.

- No more than 15% of the total budget is for direct administrative costs.
- Indirect costs do not exceed 10% of the modified total direct costs (as defined in 2 CFR 200.68) or the grantee's federally negotiated indirect cost rate reimbursement.
- The budget complies with Federal cost principles (which can be found in the applicable Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and with MSHA budget requirements contained in the grant application instructions).

(b) The application demonstrates that the applicant has strong financial management and internal control systems. (5 points)

3. Overall Qualifications of the Applicant—25 Points Total

(a) Grant Experience (6 Points)

The applicant has administered, or will work with an organization that has administered, a number of different Federal or State grants. The applicant may demonstrate this experience by having project staff that has experience administering Federal or State grants.

(b) Mine Safety Training Experience (13 Points)

- The applicant applying for the grant demonstrates experience with mine safety teaching or providing mine safety educational programs. Applicants that do not have prior experience in providing mine safety training to mine operators or miners may partner with an established mine safety organization to acquire mine safety expertise.
- Project staff has experience in mine safety, the specific topic chosen, or in training mine operators and miners.
- Project staff has experience in recruiting, training, and working with the population the organization proposes to serve.
- Applicant has experience in designing and developing mine safety training materials for a mining program.
- Applicant has experience in managing educational programs.

(c) Management (6 points)

Applicant demonstrates internal control and management oversight of the project.

4. Outputs and Evaluations—15 Points Total

The proposal should include provisions for evaluating the organization's progress in accomplishing the grant work activities and accomplishments, evaluating training sessions, and evaluating the program's effectiveness and impact to determine if the safety training and services provided resulted in workplace change or improved workplace conditions. The proposal should include a plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing miner illnesses and injuries.

B. Review and Selection Process for FY 2016 Grants

A technical panel will rate each complete application against the criteria described in this FOA. One or more applicants may be selected as grantees on the basis of the initial application submission or a minimally acceptable number of points may be established. MSHA may request final revisions to the applications, and then evaluate the revised applications. MSHA may consider any information that comes to its attention in evaluating the applications.

The panel recommendations are advisory in nature. The Deputy Assistant Secretary for Operations for Mine Safety and Health will make a final selection determination based on what is most advantageous to the government, considering factors such as panel findings, geographic presence of the applicants or the areas to be served, Agency priorities, and the best value to the government, cost, and other factors. The Deputy Assistant Secretary's determination for award under this FOA is final.

C. Anticipated Announcement and Award Dates

Announcement of the awards is expected to occur before September 30, 2016. The grant agreement will be signed no later than September 30, 2016.

VI. Award Administration Information

A. Award Process

Before September 29, 2016, organizations selected as potential grant recipients will be notified by a representative of the Deputy Assistant Secretary. An applicant whose proposal is not selected will be notified in writing. The fact that an organization has been selected as a potential grant recipient does not necessarily constitute approval of the grant application as submitted (revisions may be required).

Before the actual grant award and the announcement of the award, MSHA may enter into negotiations with the potential grant recipient concerning such matters as program components, staffing and funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Deputy Assistant Secretary reserves the right to terminate the negotiations and decline to fund the proposal.

B. Administrative and National Policy Requirements

All grantees will be subject to applicable Federal laws and regulations (including provisions of appropriations law). These requirements are attachments in the application package or are located online at *www.msha.gov:* (Select "Training and Education", click on "Training Programs and Courses", then select "Brookwood-Sago Mine Safety Grants.") The grants awarded under this competitive grant program will be subject to the following administrative standards and provisions, if applicable:

- 2 CFR part 25, Universal Identifier and System of Award Management.
- 2 CFR part 170, Reporting Subawards and Executive Compensation Information.
- 2 CFR part 175, Award Term for Trafficking in Persons.
- 2 CFR part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) (Nov. 15, 2006).
- 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Dec. 19, 2014).
- 2 CFR part 2900, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 2 CFR part 2998, Nonprocurement Debarment and Suspension.
- 29 CFR part 2, subpart D, Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.
- 29 CFR part 31, Nondiscrimination in federally assisted programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.
- 29 CFR part 32, Nondiscrimination on the basis of handicap in programs or activities receiving federal financial assistance.
- 29 CFR part 33, Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Department of Labor.
- 29 CFR part 35, Nondiscrimination on the basis of age in programs or activities receiving federal financial assistance from the Department of Labor.
- 29 CFR part 36, Nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance.
- 29 CFR part 93, New restrictions on lobbying.
- 29 CFR part 94, Government-wide requirements for drug-free workplace (financial assistance).
- Federal Acquisition Regulation (FAR) Part 31, Subpart 31.2, Contract cost principles and procedures (Codified at 48 CFR subpart 31.2).

Unless specifically approved, MSHA's acceptance of a proposal or MSHA's award of Federal funds to sponsor any program does not constitute a waiver of any grant requirement or procedure. For example, if an application identifies a specific sub-contractor to provide certain services, the MSHA award does not provide a basis to sole-source the procurement (to avoid competition).

C. Special Program Requirements

1. MSHA Review of Educational Materials

MSHA will review all grantee-produced educational and training materials for technical accuracy and suitability of content during development and before final publication. MSHA also will review training curricula and purchased training materials for technical accuracy and suitability of content before the materials are used. Grantees developing training materials must follow all copyright laws and provide written certification that their materials are free from copyright infringement.

When grantees produce training materials, they must provide copies of completed materials to MSHA before the end of the grant period. Completed materials should be submitted to MSHA in hard copy and in digital format for publication on the MSHA Web site. Two copies of the materials must be provided to MSHA. Acceptable formats for training materials include Microsoft XP Word, PDF, PowerPoint, and any other format agreed upon by MSHA.

2. License

As stated in 2 CFR 200.315 and 2 CFR 2900.13, the Department of Labor has a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes any work produced, or for which ownership was acquired, under a grant, and to authorize others to do so. Such products include, but are not limited to, curricula, training models, and any related materials. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronic, or otherwise.

3. Acknowledgement on Printed Materials

All approved grant-funded materials developed by a grantee shall contain the following disclaimer: "This material was produced under grant number 17.603 from the Mine Safety and Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

When issuing statements, press releases, request for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds must clearly state:

(a) The percentage of the total costs of the program or project that will be financed with Federal money;

(b) The dollar amount of Federal financial assistance for the project or program; and

(c) The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

4. Use of U.S. Department of Labor (USDOL) or MSHA Logo

With written permission from MSHA, the USDOL and MSHA logos may be applied to the grant-funded materials including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications. The grantees must consult with MSHA on whether the logos may be used on any such items prior to final draft or final preparation for distribution. In no event shall the DOL or MSHA logo be placed on any item until MSHA has given the grantee written permission to use the logos on the item.

5. Reporting

Grantees are required by Departmental regulations to submit financial and project reports, as described below. Grantees are also required to submit final reports no later than 90 days after the end of the grant period.

(a) Financial Reports

The grantee shall submit financial reports on a quarterly basis. Recipients are required to use the U.S. Department of Labor's Grantee Reporting Systems' electronic SF–425 (Federal Financial Report), (OMB No. 4040–0014, expiration: 1/31/2019), at *www.etareports.doleta.gov,* to report the status of all funds awarded and, if applicable, program income received and expended, during the funding period. All reports are due no later than 30 days after the end of the reporting period.

(b) Technical Project Reports

A grantee must submit a technical project report to MSHA no later than 30 days after December 31, 2016, March 31, 2017, June 30, 2017, and September 30, 2017, respectively. Technical project reports provide both quantitative and qualitative information and a narrative assessment of performance for the preceding three-month period. This should include the current grant progress against the overall grant goals as provided in Part IV.B.3.

Between reporting dates, the grantee shall immediately inform MSHA of significant developments or problems affecting the organization's ability to accomplish the work. See 2 CFR 200.328(d).

(c) Final Reports

At the end of the grant period, each grantee must provide a project summary of its technical project reports, an evaluation report, and a close-out financial report. These final reports are due no later than 90 days after the end of the 12-month performance period.

VII. Agency Contacts

Any questions regarding this FOA (FOA16–4BS) should be directed to Janice Oates at *Oates.Janice@dol.gov* or 202–693–9573 (this is not a toll-free number) or Krystle Mitchell *at@dol.gov* or 202–693–9570 (this is not a toll-free number). MSHA's Web page at *www.msha.gov* is a valuable source of background for this initiative.

VIII. Other Information

A. Freedom of Information

Any information submitted in response to this FOA will be subject to the provisions of the Freedom of Information Act, as appropriate.

B. Transparency in the Grant Process

DOL is committed to conducting a transparent grant award process and publicizing information about program outcomes. Posting awardees' grant applications on public Web sites is a means of promoting and sharing innovative ideas. Additionally, we will publish a version of the Technical Proposal required by this solicitation, for all those applications that are awarded grants, on the Department's Web site or a similar location. The Technical Proposals and Executive Summaries will not be published until after the grants are awarded. In addition, information about grant progress and results may also be made publicly available.

DOL recognizes that grant applications sometimes contain information that an applicant may consider proprietary or business confidential information, or may contain personally identifiable information. Information is considered proprietary or confidential commercial/business information when it is not usually disclosed outside your organization and when its disclosure is likely to cause you substantial competitive harm.

Personally identifiable information is information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.[1]

Executive Summaries will be published in the form originally submitted, without any redactions. However, in order to ensure that confidential information is properly protected from disclosure when DOL posts the winning Technical Proposals, applicants whose technical proposals will be posted will be asked to submit a second redacted version of their Technical Proposal, with proprietary, confidential commercial/business, and personally identifiable information redacted. All non-public information about the applicant's staff should be removed as well. The Department will contact the applicants whose technical proposals will be published by letter or email, and provide further directions about how and when to submit the redacted version of the Technical Proposal. Submission of a redacted version of the Technical Proposal will constitute permission by the applicant for DOL to post that redacted version. If an applicant fails to provide a redacted version of the Technical Proposal, DOL will publish the original Technical Proposal in full, after redacting personally identifiable information. (Note that the original, unredacted version of the Technical Proposal will remain part of the complete application package, including an applicant's proprietary and confidential information and any personally identifiable information.)

Applicants are encouraged to maximize the grant application information that will be publicly disclosed, and to exercise restraint and redact only information that truly is proprietary, confidential commercial/business information, or capable of identifying a person. The redaction of entire pages or sections of the Technical Proposal is not appropriate, and will not be allowed, unless the entire portion merits such protection. Should a dispute arise about whether redactions are appropriate, DOL will follow the procedures outlined in the Department's Freedom of Information Act (FOIA) regulations (29 CFR part 70).

Redacted information in grant applications will be protected by DOL from public disclosure in accordance with federal law, including the Trade Secrets Act (18 U.S.C. 1905), FOIA, and the Privacy Act (5 U.S.C. 552a). If DOL receives a FOIA request for your application, the procedures in DOL's FOIA regulations for responding to requests for commercial/business information submitted to the government will be followed, as well as all FOIA exemptions and procedures. 29 CFR 70.26. Consequently, it is possible that application of FOIA rules may result in release of information in response to a FOIA request that an applicant redacted in its "redacted copy."

C. Office of Management and Budget Information Collection Requirements

This FOA requests information from applicants and grantees. This collection of information is approved under OMB No. 1225–0086, expiration: 05/31/2019.

Except as otherwise noted, in accordance with the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for the grant application is estimated to average 20 hours per response, for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Each recipient who receives a grant award notice will be required to submit nine progress reports to MSHA. MSHA estimates that each report will take approximately two and one-half hours to prepare.

Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington DC 20503, the U.S. Department of Labor, OASAM–OCIO, Information Resources Program, Room N–1301, 200 Constitution Avenue NW., Washington, DC 20210, and MSHA, electronically to Janice Oates at *Oates.Janice@dol.gov* or by mail to Janice Oates, 5th floor, 201 12th Street South, Arlington, VA 22202.

This information is being collected for the purpose of awarding a grant. Submission of this information is requested for the applicant to be considered for award of this grant.

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[1] OMB Memorandum 07–16 and 06–19. GAO Report 08–536, *Privacy: Alternatives Exist for Enhancing Protection of Personally Identifiable Information*, May 2008, *www.gao.gov/assets/280/275558.pdf*.

Authority: 30 U.S.C. 965.

Dated: July 25, 2016.

Patricia W. Silvey,

Deputy Assistant Secretary for Operations.

[FR Doc. 2016–17978 Filed 7–28–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0016]

Proposed Extension of Information Collection; Ventilation Plan and Main Fan Maintenance Record

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Ventilation Plan and Main Fan Maintenance Record.

DATES: All comments must be received on or before September 27, 2016.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2016–0024.
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Underground mines usually present harsh and hostile working environments. The ventilation system is the most vital life support system in underground mining and a properly operating ventilation system is essential for maintaining a safe and healthful working environment. A well planned mine ventilation system is necessary to assure a fresh air supply to miners at all working places, to control the amounts of harmful airborne contaminants in the mine atmosphere, and to dilute possible accumulation of explosive gases.

Lack of adequate ventilation in underground mines has resulted in fatalities from asphyxiation and/or explosions due to a buildup of explosive gases. Inadequate ventilation can be a primary factor for deaths caused by disease of the lungs (*e.g.* silicosis). In addition, poor working conditions from lack of adequate ventilation contribute to accidents resulting from heat stress, limited visibility, or impaired judgment from contaminants.

The mine operator is required to prepare a written plan of the mine ventilation system. The plan is required to be updated at least annually. Upon written request of the District Manager, the plan or revisions must be submitted to MSHA for review and comment.

The main ventilation fans for an underground mine must be maintained according to the manufacturers' recommendations or a written periodic schedule. Upon request of an Authorized Representative of the Secretary of Labor, this fan maintenance schedule must be made available for review. The records assure compliance with the standard and may serve as a warning mechanism for possible ventilation problems before they occur.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Ventilation Plan and Main Fan Maintenance Record. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL–Mine Safety and Health Administration, 201 *12th* South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Ventilation Plan and Main Fan Maintenance Record. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0016.

Affected Public: Business or other for-profit.

Number of Respondents: 232.

Frequency: On occasion.

Number of Responses: 241.

Annual Burden Hours: 5,606 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,
Certifying Officer.

[FR Doc. 2016–17925 Filed 7–28–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0144]

Proposed Extension of Information Collection; Coal Mine Rescue Teams; Arrangements for Emergency Medical Assistance and Transportation for Injured Persons; Agreements; Reporting Requirements; Posting Requirements

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A). This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Coal Mine Rescue Teams; Arrangements for Emergency Medical Assistance and Transportation for Injured Persons; Agreements; Reporting Requirements; Posting Requirements.

DATES: All comments must be received on or before September 27, 2016.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2016–0023.
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

30 CFR part 49, Mine Rescue Teams, Subpart B—Mine Rescue Teams for Underground Coal Mines, sets standards related to the availability of mine rescue teams; alternate mine rescue capability for small and remote mines; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for mine rescue team members and alternates; and experience and training requirements for team members and alternates.

Section 49.12 requires each operator of an underground coal mine to send the District Manager a statement describing the mine's method of compliance with this standard. This package covers the following requirements for coal mines.

Section 49.13 provides that operators of small and remote mines may submit an application for alternative mine rescue capability to MSHA for approval.

Section 49.16 requires that a person trained in the use and care of a breathing apparatus must inspect and test the apparatus at intervals not exceeding 30 days and must certify by signature and date that the required inspections and tests were done, and record any corrective action taken.

Section 49.17 requires that each member of a mine rescue team be examined annually by a physician who must certify that each person is physically fit to perform mine rescue and recovery work.

Section 49.18 requires that a record of the training received by each mine rescue team member be made and kept on file at the mine rescue station for a period of one year. The operator must provide the District Manager information concerning the schedule of upcoming training when requested.

Section 49.19 requires that each mine have a mine rescue notification plan outlining the procedures to be followed in notifying the mine rescue teams when there is an emergency that requires their services.

Section 49.50 requires underground coal mine operators to certify that each designated coal mine rescue team meets the requirements of 30 CFR part 49 subpart B.

Sections 75.1713–1 and 77.1702 require operators to make arrangements for 24-hour emergency medical assistance and transportation for injured persons and to post this information at appropriate places at the mine, including the names, titles, addresses, and telephone numbers of all persons or services currently available under those arrangements.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Coal Mine Rescue Teams; Arrangements for Emergency Medical Assistance and Transportation for Injured Persons; Agreements; Reporting Requirements; Posting Requirements. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- *Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.*

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 *12th* South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Coal Mine Rescue Teams; Arrangements for Emergency Medical Assistance and Transportation for Injured Persons; Agreements; Reporting Requirements; Posting Requirements. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0144.

Affected Public: Business or other for-profit.

Number of Respondents: 275.

Frequency: On occasion.

Number of Responses: 15,280.

Annual Burden Hours: 2,203 hours.

Annual Respondent or Recordkeeper Cost: $617,070.

MSHA Forms: MSHA Form MSHA Form 2000–224, Operator's Annual Certification of Mine Rescue Team Qualifications, and MSHA Form 5000–3, Certificate of Physical Qualification for Mine Rescue Work.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2016–17926 Filed 7–28–16; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel.

DATES: The meeting will be held on Tuesday, August 16, 2016, from 12:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held by teleconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506, (202) 606 8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after October 1, 2016. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified, and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 15, 2016.

Dated: July 25, 2016.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2016–17913 Filed 7–28–16; 8:45 am]

BILLING CODE 7536–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78404; File No. SR–NASDAQ–2016–099]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Public Disclosure of Exchange Usage of Market Data

July 25, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to update Exchange Rule 4759 and to amend the public disclosure of the sources of data that the Exchange utilizes when performing (1) order handling and execution; (2) order routing; and (3) related compliance processes.

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

4759. Data Feeds Utilized

The NASDAQ System utilizes the below proprietary and network processor feeds for the handling, routing, and execution of orders, as well as for the regulatory compliance processes related to those functions. The Secondary Source of data is, where applicable, utilized only in emergency market conditions and only until those emergency conditions are resolved.

Market center	Primary source	Secondary source
A—NYSE MKT (AMEX)	NYSE MKT OpenBook Ultra	CQS/UQDF.
B—NASDAQ OMX BX	BX ITCH 5.0	CQS/UQDF.
C—NSX	CQS/UQDF	n/a.
D—FINRA ADF	CQS/UQDF	n/a.
J—DirectEdge A	BATS PITCH	CQS/UQDF.
K—DirectEdge X	BATS PITCH	CQS/UQDF.
M—CHX	CHX Book Feed	CQS/UQDF.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Market center	Primary source	Secondary source
N—NYSE	NYSE OpenBook Ultra	CQS/UQDF.
P—NYSE Arca	NYSE ARCA XDP	CQS/UQDF.
T/Q—NASDAQ	ITCH 5.0	CQS/UQDF.
V—IEX	*CQS/UQDF*	*n/a.*
X—NASDAQ OMX PSX	PSX ITCH 5.0	CQS/UQDF.
Y—BATS Y-Exchange	BATS PITCH	CQS/UQDF.
Z—BATS Exchange	BATS PITCH	CQS/UQDF.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the table in Exchange Rule 4759 that sets forth on a market-by-market basis the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions.

Specifically, the table will be amended to include Investors' Exchange LLC ("IEX"), which has informed the UTP Securities Information Processor ("UTP SIP") that it is projecting to activate its status as an operating participant for quotation and trading of Nasdaq-listed securities under the Unlisted Trading Privileges ("UTP") Plan on or about August 1, 2016. The primary source will be CQS/UQDF and there is no secondary source provided.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[3] in general and with sections [sic] 6(b)(5) of the Act,[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to update the table in Exchange Rule 4759 to include IEX will ensure that Exchange Rule 4759 correctly identifies and publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. Also, the proposed rule change removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the Exchange believes the proposal would enhance competition because including all of the exchanges and the correct information for the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)[5] of the Act and Rule 19b–4(f)(6) thereunder.[6]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[7] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would permit the Exchange to immediately enhance transparency and to accommodate the projected date that IEX will activate its status as an operating participant for quotation and trading of Nasdaq-listed securities under the UTP Plan. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the

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[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

Commission hereby waives the operative delay and designates the proposal operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–099 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–099. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–099, and should be submitted on or before August 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17907 Filed 7–28–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78408; File No. SR–Phlx–2016–76]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Public Disclosure of Exchange Usage of Market Data

July 25, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to update Exchange Rule 3304 and to amend the public disclosure of the sources of data that the Exchange utilizes when performing (1) order handling and execution; (2) order routing; and (3) related compliance processes.

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

Rule 3304. Data Feeds Utilized

The PSX System utilizes the below proprietary and network processor feeds for the handling, routing, and execution of orders, as well as for the regulatory compliance processes related to those functions. The Secondary Source of data is, where applicable, utilized only in emergency market conditions and only until those emergency conditions are resolved.

Market center	Primary source	Secondary source
A—NYSE MKT (AMEX)	NYSE MKT OpenBook Ultra	CQS/UQDF.
B—NASDAQ OMX BX	BX ITCH 5.0	CQS/UQDF.
C—NSX	CQS/UQDF	n/a.
D—FINRA ADF	CQS/UQDF	n/a.
J—DirectEdge A	BATS PITCH	CQS/UQDF.
K—DirectEdge X	BATS PITCH	CQS/UQDF.
M—CHX	CHX Book Feed	CQS/UQDF.
N—NYSE	NYSE OpenBook Ultra	CQS/UQDF.
P—NYSE Arca	NYSE ARCA XDP	CQS/UQDF.
T/Q—NASDAQ	ITCH 5.0	CQS/UQDF.
V—IEX	*CQS/UQDF*	*n/a.*

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[9] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Market center	Primary source	Secondary source
X—NASDAQ OMX PSX	PSX ITCH 5.0	CQS/UQDF.
Y—BATS Y-Exchange	BATS PITCH	CQS/UQDF.
Z—BATS Exchange	BATS PITCH	CQS/UQDF.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the table in Exchange Rule 3304 that sets forth on a market-by-market basis the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions.

Specifically, the table will be amended to include Investors' Exchange LLC ("IEX"), which has informed the UTP Securities Information Processor ("UTP SIP") that it is projecting to activate its status as an operating participant for quotation and trading of Nasdaq-listed securities under the Unlisted Trading Privileges ("UTP") Plan on or about August 1, 2016. The primary source will be CQS/UQDF and there is no secondary source provided.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[3] in general and with section 6(b)(5) of the Act,[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that its proposal to update the table in Exchange Rule 3304 to include IEX will ensure that Exchange Rule 3304 correctly identifies and publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. Also, the proposed rule change removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the Exchange believes the proposal would enhance competition because including all of the exchanges and the correct information for the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)[5] of the Act and Rule 19b–4(f)(6) thereunder.[6]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[7] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would permit the Exchange to immediately enhance transparency and to accommodate the projected date that IEX will activate its status as an operating participant for quotation and trading of Nasdaq-listed securities under the UTP Plan. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–76. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–76, and should be submitted on or before August 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17911 Filed 7–28–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78403; File No. SR–NSX–2016–06]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to NSX Rule 11.25(a), Stating it Will Utilize IEX Market Data From the CQS/UQDF for Purposes of Order Handling, Routing, and Related Compliance Processes

July 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 18, 2016, National Stock Exchange, Inc. ("NSX" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii)"[4] thereunder, which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to update Exchange Rule 11.25 regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) Order handling; (ii) order routing; and (iii) related compliance processes to reflect the operation of the Investors Exchange LLC ("IEX") as a registered national securities exchange[5] beginning on August 19, 2016.[6]

The text of the proposed rule change is available at the Exchange's Web site at *www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 17, 2016, the Commission approved IEX's application to register as a national securities exchange.[7] As part of its transition to exchange status, IEX has announced that it will commence a phased symbol-by-symbol roll-out on August 19, 2016, concluding on September 2, 2016.[8] The Exchange, therefore, proposes to update Rule 11.25(a) regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) Order handling; (ii) order routing; and (iii) related compliance processes to reflect the operation of IEX as a registered national securities exchange beginning on August 19, 2016. Specifically, the Exchange proposes to amend Rule 11.25(a) to include IEX by stating it will utilize IEX market data from the CQS/UQDF for purposes of order handling, routing, and related compliance processes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016) ("IEX Approval Order").

[6] *See* Letter dated June 17, 2016 from Brad Katsuyama, CEO, IEX, to IEX's Sell-Side and Buy-Side Partners (*https://www.iextrading.com/*) (stating that IEX will commence a symbol-by-symbol roll-out on August 19, 2016, concluding on September 2, 2016).

[7] *See supra* note 5.

[8] *See supra* note 6.

[9] 15 U.S.C. 78f(b).

The Exchange believes that its proposal to update Exchange Rule 11.25(a) to include IEX will ensure that the rule correctly identifies and publicly states on a market-by-market basis the specific network processor data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal would enhance competition because including all of the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[11] of the Exchange Act and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSX–2016–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2016–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2016–06, and should be submitted on or before August 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17906 Filed 7–28–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78406; File No. SR–NASDAQ–2016–100]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ Options Market LLC Pricing at Chapter XV

July 25, 2016

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 12, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NASDAQ Options Market LLC's ("NOM") pricing at Chapter XV, Sections 2(1) and 2(6) to: (i) Amend

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[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Customer[3] and Professional[4] Penny Pilot Options[5] Rebate to Add Liquidity tiers; (ii) amend the Customer and Professional Penny Pilot Options Fee for Removing Liquidity; and (iii) amend the Market Access and Routing Subsidy or "MARS."

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes three NOM pricing amendments at Chapter XV as described below in greater detail.

Pricing Change Number 1: Chapter XV, Section 2(1)—Customer and Professional Penny Pilot Options Rebate To Add Liquidity

The Exchange proposes to amend the Customer and Professional Penny Pilot Options Rebate to Add Liquidity tiers. Specifically, the Exchange proposes to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options rebate. The proposed new Tier 8 qualifications should continue to attract Customer and Professional order flow to NOM. This order flow benefits other market participants through order interaction.

Today, the Exchange pays Customer and Professional Penny Pilot Options Rebates to Add Liquidity as follows:

	Monthly volume	Rebate to add liquidity ($)
Tier 1	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 0.10% of total industry customer equity and ETF option average daily volume ("ADV") contracts per day in a month.	0.20
Tier 2	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.	0.25
Tier 3	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month.	0.42
Tier 4	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.	0.43
Tier 5	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.40% to 0.75% of total industry customer equity and ETF option ADV contracts per day in a month.	0.45
Tier 6[b]	Participant has Total Volume of 100,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options.	0.45
Tier 7[b]	Participant has Total Volume of 150,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer and/or Professional liquidity in Penny Pilot Options.	0.47
Tier 8	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below).	[c] 0.48

Today, the Exchange pays a $0.48 per contract rebate[6] to Participants that add

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[3] The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a "Professional." *See* Chapter XV.

[4] The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[5] The Penny Pilot was established in March 2008 and was last extended in 2016. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); and 78037 (June 10, 2016), 81 FR 39299 (June 16, 2016) (SR–NASDAQ–2016–052) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016). All Penny Pilot Options listed on the Exchange can be found at *http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2016-15.*

[6] Note "c," which is applicable to the Tier 8 rebate, provides additional rebates to Participants that execute certain volume on NOM. Participants that: (1) Add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month receive an additional $0.02 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market

Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 or more contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS.[7] The Exchange is proposing to continue to pay a $0.48 per contract rebate provided, NOM Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.25% or more of total industry customer equity and ETF option ADV contracts per day in a month,[8] and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS.

The Exchange's proposal to amend the current qualification from 30,000 or more contracts per day in a month to 0.25% or more of total industry customer equity and ETF option ADV contracts provides Participants the ability to qualify for this tier in lower industry ADV months because the percentage would be tied to the industry volume and not represent a fixed number. If the industry volume were to increase in a given month, the Participant will have greater opportunity to execute a higher number of contracts because the entire industry has more volume available to execute.

For example in May 2016, 0.25% of total industry customer equity and ETF option ADV contracts represented approximately 28,000 contracts as compared to the requisite 30,000 contracts which Tier 8 currently requires. Because volume was lower in the month of May 2016, market participants would have been better able to continue to meet the Tier 8 requirement with a percentage tied to volume as compared to a fixed number of contracts.

The Exchange also proposes to amend note "d," which applies to the Customer and Professional Penny Pilot Options Rebate to Add Liquidity tiers. Currently, note "d" provides that NOM Participants that qualify for MARS Payment Tiers[9] 1, 2 or 3 will receive an additional $0.05 per contract in addition to any Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity Tiers they may qualify for in that month, unless the Participant qualifies for a higher note "c" rebate,[10] in which case the Participants would receive the appropriate note "c" rebate they qualified for in that month.

The Exchange proposes to amend note "d" of Chapter XV, Section 2(1) to lower the additional rebate on Penny Pilot Options Customer and/or Professional Rebates to Add Liquidity from $0.05 to $0.03 per contract. The Exchange believes that despite lowering the additional incentive from $0.05 to $0.03 per contract, the note "d" incentive will continue to incentivize NOM Participants to participate in MARS and send qualifying order flow to the Exchange. The $0.03 per contract incentive would continue to attract Penny Pilot Option liquidity to NOM. All market participants benefit from the increased order interaction when more order flow is available on NOM.

Pricing Change Number 2: Chapter XV, Section 2(6)—MARS Pricing

The Exchange currently offers a Market Access and Routing Subsidy or "MARS" to qualifying NOM Participants in Chapter XV, Section 2(6). NOM Participants that have System Eligibility[11] and have executed the

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Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume ("CV") via Market-on-Close/Limit-on-Close ("MOC/LOC") volume within the NASDAQ Stock Market Closing Cross within a month receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month. Consolidated Volume means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. This note "c" is not being amended with this proposal.

[7] NOM Participants that have System Eligibility and have executed the requisite number of Eligible Contracts in a month are paid MARS rebates based on average daily volume in a month. *See* Chapter XV, Section 2(6).

[8] For reference, in May 2016, 0.25% of total industry customer equity and ETF option ADV equated to approximately 28,000 contracts.

[9] MARS Payments are currently based on a 3 tier rebate based on average daily volume ("ADV"). The Exchange pays a MARS Payment of $0.07 for ADV of 2,500 Eligible Contracts. The Exchange pays a MARS Payment of $0.09 for ADV of 5,000 Eligible Contracts. Finally, the Exchange pays a MARS Payment of $0.11 for AVD of 10,000 Eligible Contracts. The MARS Payment is paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV. *See* Chapter XV, Section 2(6).

[10] The note "c" incentive in Chapter XV, Section 2 provides that Participants that: (1) Add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.02 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (2) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.30% or more of total industry customer equity and ETF option ADV contracts per day in a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in that month; or (3) (a) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV contracts per day in a month, (b) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month, and (c) execute greater than 0.04% of Consolidated Volume ("CV") via Market-on-Close/Limit-on-Close ("MOC/LOC") volume within the NASDAQ Stock Market Closing Cross within a month will receive an additional $0.05 per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity for each transaction which adds liquidity in Penny Pilot Options in a month. Consolidated Volume shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of an equity member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. NOM Participants that qualify for a note "c" incentive receive the greater of the note "c" or note "d" incentive.

[11] To qualify for MARS, the Participant's routing system ("System") would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including NOM; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with NOM's API to access current NOM match engine functionality. Further, the Participant's System would also need to cause NOM to be the

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requisite number of Eligible Contracts in a month are paid rebates based on average daily volume ("ADV") in a month. Today, MARS Payments are currently based on a 3 tier rebate based on ADV. The Exchange pays a MARS Payment of $0.07 for ADV of 2,500 Eligible Contracts. The Exchange pays a MARS Payment of $0.09 for ADV of 5,000 Eligible Contracts. Finally, the Exchange pays a MARS Payment of $0.11 for ADV of 10,000 Eligible Contracts. The MARS Payment is paid on all executed Eligible Contracts that add liquidity, which are routed to NOM through a participating NOM Participant's System and meet the requisite Eligible Contracts ADV.

The Exchange proposes to provide an additional incentive to the MARS Payment in Chapter XV, Section 2(6) by offering NOM Participants that qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 [12] an additional $0.09 per contract rebate applicable to MARS Payment tiers. This $0.09 rebate would be in addition to any MARS Payment Tier [13] on MARS Eligible Contracts that the NOM Participant qualifies for in a given month. This incentive is intended to encourage NOM Participants to continue to send more order flow to the Exchange in either Penny Pilot or Non-Penny Pilot Options to qualify for the Customer and Professional Penny Pilot Options Tier 8 rebate to earn the additional MARS Payment. All market participants benefit from the increased order interaction when more order flow is available on NOM.

Pricing Change Number 3: Chapter XV, Section 2(1)—Penny Pilot Options Fee for Removing Liquidity

The Exchange is proposing to amend note "4," which is currently reserved, to lower the Customer and Professional Penny Pilot Options Fees for Removing Liquidity from $0.50 [14] to $0.48 per contract, excluding SPY,[15] for NOM Participants that qualify for MARS Payment Tiers 1, 2 or 3.

The Exchange believes that offering NOM Participants the opportunity to lower the Customer and Professional Penny Pilot Options Fees for Removing Liquidity by qualifying for MARS Payment Tiers 1, 2 or 3 and transacting MARS Eligible Contracts,[16] will incentivize NOM Participants to send more MARS Eligible Contracts to NOM. All market participants benefit from the increased order interaction when more order flow is available on NOM.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [19]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [20] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[21] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost." [22]

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ." [23] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Pricing Change Number 1: Chapter XV, Section 2(1)—Customer and Professional Penny Pilot Options Rebate to Add Liquidity

The Exchange's proposal to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity is reasonable because the rebate should continue to attract Customer and Professional order flow to NOM. The additional Customer and Professional order flow to NOM benefits other market participants by providing additional liquidity with which to interact. Amending the current qualification from 30,000 or more contracts per day in a month to 0.25% or more of total industry customer equity and ETF option ADV contracts provides Participants the ability to qualify for this tier in months with lower industry ADV because the required number of contracts would be directly correlated to industry volume. With this proposal, members that consistently send order flow to the Exchange may continue to qualify for

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one of the top three default destination exchanges for individually executed marketable orders if NOM is at the national best bid or offer ("NBBO"), regardless of size or time, but allow any user to manually override NOM as a default destination on an order-by-order basis. Any NOM Participant would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies NOM that it appears to be robust and reliable. The Participant remains solely responsible for implementing and operating its System. *See* Chapter XV, Section 2(6).

[12] With the proposal herein, to be eligible for Tier 8, a Participant is required to add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.75% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant adds: (1) Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 0.25% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS.

[13] *See* note 9 above.

[14] Currently, the Customer and Professional Penny Pilot Options Fees for Removing Liquidity are $0.50 per contract.

[15] Note "3" of the Pricing Schedule offers Customers and Professionals that remove liquidity in SPY Options a lower Customer and Professional Penny Pilot Options Fees for Removing Liquidity of $0.47 per contract.

[16] MARS Eligible Contracts include electronic Firm, Non-NOM Market Maker, Broker-Dealer or Joint Back Office orders that add liquidity, excluding Mini Options. *See* Chapter XV, Section 2(6).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

[20] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[21] *See NetCoalition,* at 534–535.

[22] *Id.* at 537.

[23] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

Tier 8 rebates. The Exchange's proposal to amend the current qualification from 30,000 or more contracts per day in a month to 0.25% or more of total industry customer equity and ETF option ADV contracts provides Participants the ability to qualify for this tier in lower industry ADV months because the percentage would be tied to the industry volume and not represent a fixed number. If the industry volume were to increase in a given month the Participant will have greater opportunity to execute a higher number of contracts because the entire industry has more volume available to execute. The Exchange notes that utilizing a percentage as compared to a fixed number is not novel. Today, NOM Customer and Professional Penny Pilot Options Tiers 1 through 5 utilize a percentage of total industry customer equity and ETF option ADV contracts per day in a month.[24]

The Exchange's proposal to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity is equitable and not unfairly discriminatory because all Participants are eligible to earn rebates. These rebates would be uniformly paid to all qualifying Participants.

The Exchange's proposal to amend note "d," which applies to any Customer and Professional Penny Pilot Options Rebates to Add Liquidity tier, to lower the per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity incentive from $0.05 to $0.03 per contract is reasonable as discussed hereafter. Despite lowering the incentive, the reduced rebate would continue to attract Penny Pilot Options liquidity to NOM and also would continue to incentivize market participants to participate in MARS. All market participants benefit from the increased order interaction when more order flow is available on NOM.

The Exchange's proposal to amend note "d," which applies to the additional Customer and Professional Penny Pilot Options Rebate to Add Liquidity tiers, to lower the additional per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity incentive from $0.05 to $0.03 per contract, is equitable and not unfairly discriminatory because all Participants are eligible to earn rebates and the rebates would be uniformly paid to all qualifying Participants. In addition, any Participant may qualify for MARS provided they have the requisite System Eligibility.

Pricing Change Number 2: Chapter XV, Section 2(6)—MARS Pricing

The Exchange's proposal to amend the MARS Payment to offer NOM Participants that qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 an additional $0.09 per contract rebate in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month is reasonable because it will encourage NOM Participants to continue to send more order flow to the Exchange in either Penny Pilot or Non-Penny Pilot Options to qualify for the higher MARS Payment. All market participants benefit from the increased order interaction when more order flow is available on NOM.

The Exchange's proposal to amend the MARS Payment to offer NOM Participants that qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 an additional $0.09 per contract rebate in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month is equitable and not unfairly discriminatory because any Participant may qualify for MARS provided they have the requisite System Eligibility. The Exchange will also uniformly pay MARS rebates to qualifying Participants on all MARS Eligible Contracts.

Pricing Change Number 3: Chapter XV, Section 2(1)—Penny Pilot Options Fee for Removing Liquidity

The Exchange's proposal to amend note "4" to lower the Customer and Professional Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, excluding SPY, provided NOM Participants qualify for MARS Payment Tiers 1, 2 or 3 is reasonable for the reasons which follow. NOM Participants will be encouraged to send additional electronic MARS Eligible Contracts[25] to NOM to obtain the fee reduction. This should in turn incentivize NOM Participants to send more order flow to NOM. All market participants benefit from the increased order interaction when more order flow is available on NOM. Excluding SPY from the note "4" discount is reasonable because SPY options are among the most highly liquid options. Today, the Exchange prices SPY differently from other Multiply-Listed Options.[26] Other options exchanges price differently by options symbol.[27]

The Exchange's proposal to amend note "4" to lower the Customer and Professional Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, excluding SPY, provided NOM Participants qualify for MARS Payment Tiers 1, 2 or 3 is equitable and not unfairly discriminatory because all Participants may qualify for MARS provided they have the requisite System Eligibility. The Exchange will also uniformly assess the discounted Customer and Professional Penny Pilot Options Fees for Removing Liquidity to qualifying Participants. Excluding SPY from the note "4" discount is equitable and not unfairly discriminatory because the Exchange pays discounts today for SPY options transactions. Today, note "3" of Chapter XV, Section 2(1) assesses Customers and Professionals that remove liquidity in SPY Options a $0.47 per contract discounted Customer and Professional Penny Pilot Options Fees for Removing Liquidity. Both notes "3" and "4" of Chapter XV, Section 2(1) are paid uniformly to all qualifying Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed fee changes are competitive and do not impose a burden on inter-market competition. Today, other venues offer rebate programs, discounted fees and incentives for maintain routing systems.[28] In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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[24] *See* Chapter XV, Section 2(1).

[25] *See* note 16 above.

[26] *See* current note "3" at Chapter XV, Section 2(1).

[27] *See* NASDAQ PHLX LLC's ("Phlx") Pricing Schedule at Section I which contains pricing for options overlying SPY that is different from other Multiply Listed Options pricing in Section II of that Pricing Schedule.

Pricing Change Number 1: Chapter XV, Section 2(1)—Customer and Professional Penny Pilot Options Rebate To Add Liquidity

The Exchange's proposal to amend the current qualifications related to the Tier 8 Customer and Professional Penny Pilot Options Rebate to Add Liquidity does not impose an undue burden on intra-market competition because all Participants are eligible to earn rebates and these rebates would be uniformly paid to all qualifying Participants.

The Exchange's proposal to amend note "d," which applies to the Customer and Professional Penny Pilot Options Rebate to Add Liquidity tiers, to lower the additional amount of the per contract Penny Pilot Options Customer and/or Professional Rebate to Add Liquidity from $0.05 to $0.03 per contract does not impose an undue burden on intra-market competition because all Participants are eligible to earn rebates and these rebates would be uniformly paid to all qualifying Participants. In addition, any Participant may qualify for MARS provided they have the requisite System Eligibility.

Pricing Change Number 2: Chapter XV, Section 2(6)—MARS Pricing

The Exchange's proposal to amend the MARS Payment to offer NOM Participants that qualify for Customer or Professional Penny Pilot Options Rebate to Add Liquidity Tier 8 an additional $0.09 per contract rebate, in addition to any MARS Payment tier on MARS Eligible Contracts the NOM Participant qualifies for in a given month, does not impose an undue burden on intra-market competition because any Participant may qualify for MARS provided they have the requisite System Eligibility. The Exchange will also uniformly pay MARS Payments to qualifying Participants on all Eligible Contracts.

Pricing Change Number 3: Chapter XV, Section 2(1)—Penny Pilot Options Fee for Removing Liquidity

The Exchange's proposal to amend note "4" to lower the Customer and Professional Penny Pilot Options Fees for Removing Liquidity from $0.50 to $0.48 per contract, excluding SPY, provided NOM Participants qualify for MARS Payment Tiers 1, 2 or 3 does not impose an undue burden on intra-market competition because all Participants may qualify for MARS provided they have the requisite System Eligibility. The Exchange will also uniformly assess the discounted Customer and Professional Penny Pilot Options Fees for Removing Liquidity to qualifying Participants. Excluding SPY does not impose an undue burden on intra-market competition because today, the Exchange offers a discount for SPY options, which discounts are uniformly paid to all Participants. Today, other options exchanges price differently by options symbol.[29]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[30]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–100. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should referto File Number SR–NASDAQ–2016–100, and should be submitted on or before August 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17909 Filed 7–28–16; 8:45 am]

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[28] *See* Phlx's Pricing Schedule at Section B (Customer Rebate Program) and Section IV, Part E (MARS). Also, the International Securities Exchange LLC ("ISE") offers a lower Market Maker Taker Fee for Select Symbols of $0.44 per contract for Market Makers with total affiliated Priority Customer Complex ADV of 150,000 or more contracts. *See* ISE's Fee Schedule.

[29] *See* note 27.

[30] 15 U.S.C. 78s(b)(3)(A)(ii).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission Equity Market Structure Advisory Committee will hold a public meeting on Tuesday, August 2, 2016, in the Multipurpose Room, LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC

The meeting will begin at 9:30 a.m. (EDT) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will be open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov.*

On July 13, 2016, the Commission published notice of the Committee meeting (Release No. 34–78308), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting will focus on updates and potential recommendations from the four subcommittees.

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: July 26, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–18061 Filed 7–27–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78417]

Order Granting Application of Investors' Exchange LLC for a Limited Exemption from Exchange Act Rule 10b–10(a)(2)(i)(A) pursuant to Rule 10b–10(f)

July 26, 2016.

I. Introduction

By letter dated July 19, 2016 ("the Application"), Investors' Exchange LLC ("IEX" or the "Exchange") requests a limited exemption from the requirements of Rule 10b–10(a)(2)(i)(A) under the Securities Exchange Act of 1934 ("Exchange Act") on behalf of Members[1] that execute trades on the Exchange for their customers. As discussed in the Application, IEX will operate a fully automated electronic order book with a continuous, automated matching function that will provide for strict price-display-time priority execution ("Trading System").[2] The order book and the Exchange's rules provide for post trade anonymity through settlement for trades executed through IEX.[3]

II. Background[4]

a. The Exchange

IEX is registered as a national securities exchange under Section 6 of the Exchange Act.[5] The Members of the Exchange consist of those broker-dealers admitted to Membership and entitled to enter orders in, and receive executions through, the Exchange's order book or otherwise.

The Exchange will operate an order book for orders with a continuous, automated matching function, in compliance with the Exchange's rules and Regulation NMS under the Act.[6] Liquidity will be derived from orders to buy and orders to sell submitted to the Exchange electronically by its Members from remote locations.

The order book and the Exchange's rules will provide for strict price-display-time priority execution. Under IEX Rule 11.220, orders will be prioritized on a strict price-display-time basis, first by price, then by display (with displayed orders and displayed portions of orders having precedence over non-displayed orders and non-displayed portions of orders at a given price) and then by time. Incoming orders are first matched for execution against orders in the IEX order book. Orders that cannot be executed are eligible for routing to away trading centers, if consistent with the terms of the orders.[7] All trades will be executed through the Exchange's Trading System on an anonymous basis. The transaction reports produced by the Trading System will indicate the details of transactions executed in the Trading System but shall not reveal the contra party identities. Transactions executed in the Trading System will also be cleared and settled anonymously.[8]

The order book's matching system algorithm permits orders originated by an IEX Member to execute against other orders from the same participant on the same basis as orders from other Members. In the order book's handling of displayed orders, which is based on strict price-display-time priority, a Member could receive an execution against itself, and under the Exchange's Rules, the Member would not know that it was the contra-side of the trade at the time of execution.

a. Rule 10b–10

Rule 10b–10 under the Exchange Act generally requires broker-dealers effecting a customer transaction in securities (other than U.S. savings bonds or municipal securities)[9] to provide a written notification to its customer, at or before completion of a securities transaction, that discloses information specific to the transaction. In particular, under Rule 10b–10(a)(2)(i)(A), when a broker-dealer acts as agent for a customer, for some other person, or for both a customer and some other person, the broker-dealer must disclose "[t]he name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that the information will be furnished upon written request of such customer" (the "Contra-Party Identity Requirement").

III. Relief Sought

As explained in the Application, trades are executed with total anonymity on IEX, where the identity of the actual contra-party is not revealed when the trade is executed.[10] Because of this, Members will not know the identity of the party to whom they sold securities or from whom they purchased securities. Without this information, Members would not be able to comply with the Contra-Party Identity Requirement of Rule 10b–10. To permit IEX Members to utilize the Exchange without violating Rule 10b–10 under the Exchange Act, on behalf of its Members, is seeking an exemption under Rule 10b–10(f) from the Contra-Party Identity Requirement of Rule 10b–10 when Members execute transactions at IEX, as described in the Application.

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[1] Unless otherwise defined in this order, defined terms used have the same meaning as described in the Exchange Rules.

[2] *See* IEX Rule 11.220. IEX represents that the Exchange's rules do not provide for any special order type that would be an exception to the strict price-display-time priority handling of orders as set forth in IEX Rule 11.220.

[3] As explained in the Application, the Exchange does not request an exemption from Rule 10b–10(a)(2)(i)(A) for when it reveals the identity of a Member or a Member's clearing firm: (i) For regulatory purposes or to comply with an order of a court or arbitrator; or (ii) when a Registered Clearing Agency (such as the National Securities Clearing Corporation) ceases to act for a Member or the Member's clearing firm, and determines not to guarantee the settlement of the Member's trades. *See* IEX Rule 11.250(d)(2).

[4] Background information is derived from the Application.

[5] *See* In the Matter of the Application of: Investors' Exchange, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission, Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41141 (June 23, 2016).

[6] *See* 17 CFR 242.600 *et seq.*

[7] *See* IEX Rule 11.230. The Exchange understands that the exemptive relief would not apply to any situation in which the Trading System routes an order to an away trading center for execution, as such executions would be governed by the rules of the away trading center.

[8] Except for the conditions set forth in IEX Rule 11.250(d)(2). *See supra* note 3.

[9] Municipal securities are subject to the transaction confirmations requirements under Rule G–15 of the Municipal Securities Rulemaking Board.

IV. Conclusion

Based on the facts and representations contained in the Application, we find that it is appropriate and in the public interest and consistent with the protection of investors to grant the Exchange, on behalf of its Members, a limited exemption from the Contra-Party Identity Requirement in Rule 10b–10(a)(2)(i)(A).

IT IS HEREBY ORDERED, pursuant to Rule 10b–10(f) of the Exchange Act, that IEX Members, based on the representations and facts contained in the Application, are exempt from the requirements of Rule 10b–10(a)(2)(i)(A) of the Exchange Act, to the extent that Members execute trades for their customers on the Exchange using the IEX Trading System. This exemption is limited to trades that Members execute on IEX using the post trade anonymity feature described in the Application.[11]

The foregoing exemption is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–18020 Filed 7–28–16; 8:45 am]

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[10] Except for the conditions set forth in IEX Rule 11.250(d)(2). *See supra* note 3.

[11] This exemption does not apply: (a) To orders routed to an away trading center for execution; (b) under the circumstances described in note 3 *supra;* or (c) if the functionality of IEX's order book were to be changed to allow a broker-dealer to select or influence against whom its orders will be executed as described in the Application on page 5 and note 10.

[12] 17 CFR 200.30–3(32).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78407; File No. SR–CBOE–2016–057]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Tied to Stock Orders

July 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change deletes Rules 6.53(y), 6.77(e) and 15.2A. The text of the proposed rule change is provided below.

(additions are *underlined;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.53. Certain Types of Orders Defined

One or more of the following order types may be made available on a class-by-class basis. Certain order types may not be made available for all Exchange systems. The classes and/or systems for which the order types shall be available will be as provided in the Rules, as the context may indicate, or as otherwise specified via Regulatory Circular.

(a)–(x) No change.

[(y) Tied to Stock Order. An order is "tied to stock" if, at the time the Trading Permit Holder representing the order on the Exchange receives or initiates the order, the Trading Permit Holder has knowledge that the order is coupled with an order(s) for the underlying stock or a security convertible into the underlying stock ("convertible security"). The representing Trading Permit Holder must include an indicator on each tied to stock order upon systemization, unless:

(i) The order is submitted to the Exchange as part of a qualified contingent cross order (as defined in this Rule 6.53) through an Exchange-approved device;

(ii) the order is submitted to the Exchange for electronic processing as a stock-option order (as defined in Rule 6.53C); or

(iii) all of the component orders are systematized on a single order ticket.

An order is not "tied to stock" if it is not coupled with an order(s) for the underlying stock or convertible security at the time of receipt or initiation (*e.g.,* an option order that is received or initiated to hedge a previously executed stock transaction, an option transaction or position that is hedged with a subsequently received or initiated stock order).]

. . . Interpretations and Policies:

.01–.02 No change.

* * * * *

Rule 6.77. Order Service Firms

(a)–(d) No change.

[(e) Order service firms must submit reports pursuant to Rule 15.2A with respect to the stock transactions it executes on behalf of market-makers pursuant to this Rule 6.77.]

* * * * *

[Rule 15.2A. Reports of Execution of Stock Transactions

In a manner and form prescribed by the Exchange, each Trading Permit Holder must, on the business day following the order execution date, report to the Exchange the following information for the executed stock or convertible security legs of QCC orders, stock-option orders and other tied to stock orders that the Trading Permit Holder executed on the Exchange that trading day: (a) Time of execution, (b) execution quantity, (c) execution price, (d) venue of execution, and (e) any other information requested by the Exchange. A Trading Permit Holder may arrange for its clearing firm to submit these reports on its behalf; provided that if the clearing firm does not report an executed stock order, the Trading Permit Holder will be responsible for reporting the information.

. . . Interpretation and Policies:

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

.01 The Exchange will announce by Regulatory Circular any determinations, including the manner and form of the report, that it makes pursuant to Rule 15.2A.

.02 A Trading Permit Holder (or its clearing firm) does not need to report information pursuant to Rule 15.2A with respect to (a) stock-option orders (as defined in Rule 6.53C) submitted to the Exchange for electronic processing or (b) stock or convertible security orders entered into an Exchange-approved device.

.03 A Market-Maker (or its clearing firm) may include the information required by Rule 15.2A in the equity reports submitted to the Exchange pursuant to Rule 8.9(b).

.04 If a tied to stock order executed at multiple options exchanges, a Trading Permit Holder (or its clearing firm) may report to the Exchange the information pursuant to Rule 15.2A for the entire stock or convertible security component(s) rather than the portion of the stock or convertible security component(s) applicable to the portion of the order that executed at the Exchange.

.05 In lieu of the time of execution pursuant to Rule 15.2A(a), the Exchange may accept the time of the trade report if that time is generally within 90 seconds of the time of execution.]

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 13, 2014, the Securities and Exchange Commission (the "Commission") approved CBOE Rules 6.53(y), 6.77(e) and 15.2A.[5] Rule 6.53(y) defines a tied to stock order[6] and requires the representing Trading Permit Holder to include an indicator on each tied to stock order upon systemization, subject to certain exceptions. Rule 15.2A requires, in a manner and form prescribed by the Exchange, each Trading Permit Holder ("TPH"), on the business day following the order execution date, to report to the Exchange certain information regarding the executed stock or convertible security legs of qualified contingent cross ("QCC") orders,[7] stock-option orders and other tied to stock orders that the TPH executed on the Exchange that trading day. Rule 6.77(e) subjects order service firms[8] to the reporting requirements set forth in Rule 15.2A with respect to stock transactions they execute on behalf of market-makers on the floor of the Exchange. The Exchange stated in rule filing SR–CBOE–2014–040 that it would issue a circular announcing the implementation date for these rules within 90 days of the date of filing, which implementation date would be within 180 days of the date of filing.

On January 7, 2015, CBOE submitted a rule filing to delay the implementation of these rules based on feedback it received from TPHs.[9] The Exchange stated in that rule filing that it would issue a circular announcing the implementation date for the rules within 90 days of the date of the rule filing, which implementation date would be within 180 days of the date of filing. In accordance with that filing, the Exchange issued a regulatory circular on April 7, 2015, which announced a July 1, 2015 implementation date for the tied to stock marking and reporting requirements.[10] On May 20, 2015, the Exchange submitted a rule filing to further delay implementation of the reporting requirement set forth in Rule 15.2A[11] for 12 to 18 months in order to evaluate the format of the reports in light of its entry into a Regulatory Services Agreement with the Financial Industry Regulatory Authority, Inc. ("FINRA")[12] to ensure information in the reports could be incorporated into surveillances in an efficient and effective manner. In that filing, CBOE announced its intention to proceed with the implementation of the marking requirements set forth in Rule 6.53(y) on July 1, 2015. On July 1, 2015, the Exchange submitted a rule filing to further delay implementation of the marking requirement set forth in Rule 6.53(y) with respect to orders submitted to the Exchange for electronic processing for six to 18 months (the filing confirmed implementation of the marking requirement with respect to orders submitted to the Exchange for nonelectronic processing).[13] In addition to the evaluation of the proposed report format, CBOE indicated it intended to review the number of tied to stock orders received and evaluate the number of reports it could expect to receive with respect to those orders and the potential impact of the reports on CBOE surveillances.

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[5] Securities Exchange Act release No. 34–72839 (August 13, 2014), 79 FR 49123 (August 19, 2014) (SR–CBOE–2014–040).

[6] Rule 6.53(y) provides that an order is "tied to stock" if, at the time the Trading Permit Holder representing the order on the Exchange receives the order (if the order is a customer order) or initiates the order (if the order is a proprietary order), has knowledge that the order is coupled with an order(s) for the underlying stock or a security convertible into the underlying stock ("convertible security" and, together with underlying stock, "non-option").

[7] A QCC order is an order to buy (sell) at least 1,000 standard option contracts or 10,000 mini-option contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order to sell (buy) an equal number of contracts. These orders may only be entered in the standard increments applicable to simple orders in the options class under Rule 6.42. For purposes of this order type, a "qualified contingent trade" is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) At least one component is an NMS stock, as defined in Rule 600 of Regulation NMS under the Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (*e.g.*, the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. QCC orders may execute without exposure provided the execution is not at the same price as a public customer order resting in the electronic book and is at or between the national best bid or offer. A QCC order will be cancelled if it cannot be executed. *See* Rule 6.53(u).

[8] Order service firms are TPH organizations that are registered with the Exchange for the purpose of taking orders for the purchase or sale of stocks or commodity futures contracts (and options thereon) from market-makers on the floor of the Exchange and forwarding such orders for execution. Rule 6.77(a).

[9] Securities Exchange Act Release No. 34–74067 (January 15, 2015), 80 FR 3267 (January 22, 2015) (SR–CBOE–2015–004).

[10] CBOE Regulatory Circular RG15–056 (April 7, 2015).

[11] Pursuant to CBOE Regulatory Circular RG13–102 (July 19, 2013), CBOE imposed a reporting requirement with respect to QCC orders prior to the adoption of Rule 15.2A. As stated in that circular, as long as the QCC functionality remains active, the reporting requirement for QCC orders described in Regulatory Circular RG13–102 would continue to be in effect until the implementation of Rule 15.2A. Once implemented, the reporting requirement in Rule 15.2A would supersede the QCC order reporting requirement described in that circular. *See also* CBOE Regulatory Circular RG15–087 (May 29, 2015).

[12] Securities Exchange Act Release No. 34–75029 (May 21, 2015), 80 FR 30506 (May 28, 2015) (SR–CBOE–2015–051) (notice of filing and immediate effectiveness of proposed rule change).

Based on this evaluation, the Exchange does not believe it is necessary to maintain or fully implement the marking requirement or implement the reporting requirement; therefore, the Exchange proposes to delete these requirements in their entirety from its rules.[14] Because the definition of tied to stock orders is only used in the rules for the marking and reporting requirements, the proposed rule change also deletes the definition of tied to stock orders. While CBOE continues to believe this type of information would benefit its cross-market activity surveillances, based on our evaluation, CBOE believes the requirements would apply to only a small number of orders.[15] During the evaluation period discussed above (during which the tied to stock marking requirement was in effect for orders submitted to the Exchange for nonelectronic processing), fewer than 0.25% of orders submitted to the Exchange for nonelectronic processing included the tied to stock indicator.[16] If the marking and reporting requirements were fully implemented, the number of orders to which they would apply would be limited given the exceptions that currently exist in the rules and other changes that CBOE has implemented. For example, subsequent to the approval of SR–CBOE–2015–040, the Exchange amended CBOE Rule 6.53 to require complex orders of twelve (12) legs or less—one leg of which may be for an underlying security or security future, as applicable—to be entered on a single order ticket at time of systemization (referred to herein as the "single order ticket rule change").[17] These orders are excepted from the tied to stock marking requirement under Rule 6.53(y)(iii) (which provides an exception if all the component orders of a tied to stock order are systemized on a single order ticket) and would often qualify for an exception from the reporting requirement under Rule 15.2A (*e.g.*, the exceptions under Interpretation and Policy .02 which apply to (1) stock-option orders (as defined in Rule 6.53C) submitted to the Exchange for electronic processing or (2) stock or convertible securities orders entered onto an Exchange-approved device). The single order ticket rule change—as well as provisions in the rules exempting certain orders from the tied to stock marking and reporting requirements—result in a number of orders qualifying for an exemption from the tied to stock marking and reporting requirements. This, in turn, reduces the number of orders to which the tied to stock marking and reporting requirements would apply once implemented. As a result, at this time, CBOE believes the benefits to its surveillances for so few orders are outweighed by the additional costs to TPHs to implement the marking requirement (for orders submitted for electronic processing) and the reporting requirement.

CBOE acknowledged in the initial filing to adopt the tied to stock marking and reporting requirements relevant stock information would be captured by the Consolidated Audit Trail ("CAT"), once the relevant CAT provisions have been approved and implemented. Specifically, once approved and implemented, Section 6.3 of the National Market System Plan Governing the Consolidated Audit Trail would require each national securities exchange to record and report to the CAT central repository specified information for each order and execution, among other things, on its exchange for eligible securities, which include stock and listed options.[18] Additionally, once approved and implemented, Section 6.4 of the Plan would require each national securities exchange to require its members to report certain data to the central repository specified information for each order and execution for eligible securities, among other things.[19] Under the Plan, as proposed, the central repository would be responsible for the receipt, consolidation and retention of all information reported to CAT pursuant to Rule 613 under Regulation NMS.[20] Exchanges would have access to the central repository, including access to and use of the CAT data stored in the central repository, for the purpose of performing their respective regulatory and oversight responsibilities pursuant to federal securities laws, rules and regulations.[21]

At the time of that initial tied to stock filing, the Exchange expected implementation of CAT would not occur for several years. However, since that time, an amended and restated version of the Plan has been submitted by the self-regulatory organizations to the Commission and published by the Commission for comment and approval.[22] As a result, the Exchange believes the implementation of CAT may occur in the near future. The order and execution information described above that would be reported to CAT is the same information that the tied to stock reporting requirement was designed to capture from TPHs. Because the Exchange would have access to this information from the CAT central repository once implemented, CBOE no longer believes the short-term benefits it may obtain from the tied to stock marking and reporting requirements prior to the implementation of CAT outweigh the costs to be undertaken by

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[13] Securities Exchange Act Release No. 34–75378 (July 7, 2016), 80 FR 40116 (July 13, 2015) (SR–CBOE–2015–067) (notice of filing and immediate effectiveness of proposed rule change); *see also* CBOE Regulatory Circular RG15–093 (June 19, 2015). CBOE notes that it performed the systems work necessary for Exchange-approved devices the Exchange makes available to floor brokers to have the functionality to allow floor brokers to mark orders as tied to stock at the time of systemization of the order.

[14] As discussed above, prior to the adoption of Rule 15.2A, the Exchange required TPHs to submit reports of stock trades related to QCC transactions. This QCC stock leg reporting requirement continued to apply during the delay to implementation of Rule 15.2A and will continue to apply after deletion of the tied to stock reporting requirement from the Rules. *See supra* note 11.

[15] As set forth in Rule 6.53(y), orders coupled with an order for stock are defined as tied to stock orders; however, various tied to stock orders are exempt from the marking requirement, including QCC orders, stock-option orders submitted for electronic processing, and orders for which all components are systematized on a single order ticket. Similarly, as set forth in Rule 15.2A, Interpretation and Policy .02, TPHs do not need to submit reports for stock-option orders submitted to the Exchange for electronic processing or stock or convertible security orders entered into an Exchange-approved device. As a result, only a subset of tied to stock orders would be subject to the marking and reporting requirements.

[16] Specifically, during the third quarter of 2015, the fourth quarter of 2015 and the first quarter of 2016, the percentage of orders submitted to the Exchange for nonelectronic processing that included the tied to stock indictor was approximately 0.17%, 0.16% and 0.21%, respectively.

[17] *See* Rule 6.53, Interpretation and Policy 02. In addition, orders of more than twelve (12) legs (one leg of which may be for an underlying security or security future, as applicable) may be split across multiple order tickets subject to certain requirements. *See* Securities Exchange Act Release Nos. 34–74389 (February 26, 2015), 80 FR 11717 (March 4, 2015) (SR–CBOE–2015–011) and 34–75026 (May 21, 2015), 80 FR 30514 (May 28, 2015) (SR–CBOE–2015–048). Mandatory compliance with this requirement went into effect June 1, 2015. *See* CBOE Regulatory Circulars RG15–067 (April 22, 2015) and RG15–092 (June 17, 2015).

[18] *See* Securities Exchange Act Release No. 34–77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (notice of filing of the National Market System Plan Governing the Consolidated Audit Trail (the "Plan")), at Section 6.3(d); *see also* 17 CFR 242.600(b)(46) (definition of NMS security).

[19] *See id.* at Section 6.4(d).

[20] *See id.* at Section 1.1.

[21] *See id.* at Section 6.5(c).

[22] *See id.*

CBOE and TPHs in connection with efforts related to CAT's implementation, especially in light of the small number of orders expected to be impacted by the tied to stock requirements, as discussed above.[23] The Exchange also notes it may continue to request from TPHs information regarding stock executions when necessary to perform cross-market surveillances in connection with its regulatory duties.[24] The marking and reporting requirements were intended to reduce TPHs' and the Exchange's administrative burden of manually gathering cross-market information to tie non-option legs to option orders. Because the Exchange has not yet implemented the reporting requirement, since approval of the initial tied to stock rule filing, the Exchange has continued, and will continue, to maintain the ability with this manual process of requesting information, as necessary or appropriate. The Exchange has, and expects to continue to have, sufficient resources to perform these ad hoc reviews in connection with its surveillances, particularly given the reduced number of orders with a stock component for which CBOE may need this information and the implementation of the single order ticket rule change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[25] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [26] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, CBOE believes it efficiently and effectively conducts its regulatory surveillances of CBOE trading activity and cross-market trading activity. While the information that would be provided to CBOE from the tied to stock marking and reporting requirements would enhance these surveillances, based on an evaluation of the factors described above, CBOE has determined these enhancements would apply to a small number of orders. The single order ticket rule change—as well as provisions in the rules exempting certain orders from the tied to stock marking and reporting requirements—result in a number of orders qualifying for an exemption from the tied to stock marking and reporting requirements. This, in turn, further reduces the number of orders to which the tied to stock marking and reporting requirements would apply once implemented. As a result, CBOE no longer believes the benefits to its surveillances for a smaller number of orders that may be obtained from implementation of these requirements outweigh the additional costs to TPHs to implement the marking requirement for orders submitted for electronic processing and the reporting requirement. As discussed above, during an evaluation period when the marking requirement for orders submitted for nonelectronic processing was effective, fewer than 0.25% of orders submitted for nonelectronic processing included the tied to stock indicator. Additionally, as discussed above, CAT will capture this information, at which time CBOE will be able to realize these potential benefits. CBOE may continue to request from TPHs information regarding stock executions when necessary so that it can continue to effectively conduct its regulatory surveillances of CBOE trading activity and cross-market activity.

The proposed rule change has minimal impact on TPHs. With respect to orders submitted to the Exchange for electronic processing, there will be no change for TPHs, as they are currently not required, and no longer will be in the future, to mark tied to stock orders (or perform the system development work to comply with this marking requirement). Additionally, TPHs currently are not required, and no longer will be in the future, to submit reports related to tied to stock orders.[28] With respect to orders submitted to the Exchange for nonelectronic processing, floor brokers will no longer be required to mark those orders upon systemization, which was a small number of orders as noted above. The marking and reporting requirements were intended to reduce TPHs' and the Exchange's administrative burden of manually gathering cross-market information to tie non-option legs to option orders. Because the Exchange has not yet implemented the reporting requirement, since approval of the initial tied to stock rule filing, the Exchange has continued, and will continue, to maintain the ability with this manual process of requesting information, as necessary or appropriate. Deletion of these requirements merely changes the timing when TPHs may need to submit information regarding tied to stock orders (within one business day of execution of a tied to stock order v. in response to a regulatory request). The Exchange has, and expects to continue to have, sufficient resources to perform these ad hoc reviews in connection with its surveillances, particularly given the reduced number of orders with a stock component for which CBOE may need this information and the implementation of the single order ticket rule change.

The term tied to stock order is used only in the rules for the tied to stock marking and reporting requirements, which this filing proposes to delete. Therefore, the Exchange believes deleting the definition is consistent with the Act, as continued inclusion of the definition of a term not used elsewhere in the rules would otherwise confuse investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change deletes rules the Exchange only partially implemented. With respect to orders submitted to the Exchange for electronic processing, there will be no change for TPHs, as they are currently not required, and no longer will be in the future, to mark tied to stock orders (or perform the system development work to comply with this marking requirement). Additionally, TPHs currently are not required, and no longer will be in the future, to submit reports related to tied to stock orders.[29] With respect to orders submitted to the Exchange for nonelectronic processing, floor brokers will no longer be required to mark those orders upon systemization. The Exchange notes that floor brokers were not burdened with any costs upon implementation of that limited marking requirements, as CBOE was responsible for that development work for devices that floor brokers may use to systematize orders represented in open outcry. Therefore, deletion of these rules has no impact on TPHs with respect to orders submitted for electronic processing and eliminates a requirement for floor brokers to include an indicator on a small number of orders. As the Exchange never implement the reporting requirement for any orders, deletion of that rule will have no impact on TPHs.

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[23] While the Plan does not require orders to be marked as tied to stock, because the Exchange will have access to all order and execution information for stock and options through the central depository, including timing information, the Exchange would not need those orders to be marked. The purpose of the marking requirement was to notify the Exchange the TPH that submitted a tied to stock option order on CBOE would separately be submitting execution information for a stock trade related to that marked option order.

[24] *See* SR–CBOE–2014–040.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *Id.*

[28] As discussed above, prior to the adoption of Rule 15.2A, the Exchange required TPHs to submit reports of stock trades related to QCC transactions. This QCC stock leg reporting requirement continued to apply during the delay to implementation of Rule 15.2A and will continue to apply after deletion of the tied to stock reporting requirement from the Rules. *See supra* note 11.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[30]

A proposed rule change filed under Rule 19b–4(f)(6) [31] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [32] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchanges requests a waiver because of the minimal impact this proposed rule change will have on TPHs, the small number of orders to which the tied to stock marking and reporting requirements would apply, and the Exchange's continued ability to access to information regarding stock executions by requesting it from TPHs when necessary so that it can continue to effectively conduct its regulatory surveillances of CBOE trading activity and cross-market activity. Additionally, the Exchange notes that in the rule filings to delay implementation of the marking requirement set forth in Rule 6.53(y) with respect to orders submitted to the Exchange for electronic processing and the reporting requirement set forth in Rule 15.2A, the Exchange has stated that it would implement these requirements by July 1, 2016.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the Exchange notes that: (1) The number of orders to which the tied to stock marking and reporting requirements would apply are low and (2) even without the marking and reporting requirements, the Exchange has, and expects to continue to have, sufficient resources to perform ad hoc reviews in connection with its surveillance. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[33]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [34] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–057. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–057 and should be submitted on or before August 19, 2016.

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[29] *Id.*

[30] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[31] 17 CFR 240.19b–4(f)(6).

[32] 17 CFR 240.19b–4(f)(6)(iii).

[33] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78s(b)(2)(B).

[35] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17910 Filed 7–28–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78405; File No. SR–BX–2016–04]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Public Disclosure of Exchange Usage of Market Data

July 25, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2016, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to update Exchange Rule 4759 and to amend the public disclosure of the sources of data that the Exchange utilizes when performing (1) order handling and execution; (2) order routing; and (3) related compliance processes.

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

4759. Data Feeds Utilized

The BX System utilizes the below proprietary and network processor feeds for the handling, routing, and execution of orders, as well as for the regulatory compliance processes related to those functions. The Secondary Source of data is, where applicable, utilized only in emergency market conditions and only until those emergency conditions are resolved.

Market center	Primary source	Secondary source
A—NYSE MKT (AMEX)	NYSE MKT OpenBook Ultra	CQS/UQDF.
B—NASDAQ OMX BX	BX ITCH 5.0	CQS/UQDF.
C—NSX	CQS/UQDF	n/a.
D—FINRA ADF	CQS/UQDF	n/a.
J—DirectEdge A	BATS PITCH	CQS/UQDF.
K—DirectEdge X	BATS PITCH	CQS/UQDF.
M—CHX	CHX Book Feed	CQS/UQDF.
N—NYSE	NYSE OpenBook Ultra	CQS/UQDF.
P—NYSE Arca	NYSE ARCA XDP	CQS/UQDF.
T/Q—NASDAQ	ITCH 5.0	CQS/UQDF.
V—IEX	*CQS/UQDF*	*n/a.*
X—NASDAQ OMX PSX	PSX ITCH 5.0	CQS/UQDF.
Y—BATS Y-Exchange	BATS PITCH	CQS/UQDF.
Z—BATS Exchange	BATS PITCH	CQS/UQDF.

* * * * *

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update and amend the table in Exchange Rule 4759 that sets forth on a market-by-market basis the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions.

Specifically, the table will be amended to include Investors' Exchange LLC ("IEX"), which has informed the UTP Securities Information Processor ("UTP SIP") that it is projecting to activate its status as an operating participant for quotation and trading of Nasdaq-listed securities under the Unlisted Trading Privileges ("UTP") Plan on or about August 1, 2016. The primary source will be CQS/UQDF and there is no secondary source provided.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general and with Sections [sic] 6(b)(5) of the Act,[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

The Exchange believes that its proposal to update the table in Exchange Rule 4759 to include IEX will ensure that Exchange Rule 4759 correctly identifies and publicly states on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. Also, the proposed rule change removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides additional specificity, clarity and transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the Exchange believes the proposal would enhance competition because including all of the exchanges and the correct information for the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and Rule 19b–4(f)(6) thereunder.[6]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[7] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would permit the Exchange to immediately enhance transparency and to accommodate the projected date that IEX will activate its status as an operating participant for quotation and trading of Nasdaq-listed securities under the UTP Plan. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2016–044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–044. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–044, and should be submitted on or before August 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–17908 Filed 7–28–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14779 and #14780]

Virginia Disaster #VA–00064

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Virginia dated 07/22/2016.

Incident: Severe storms and flooding.

Incident Period: 06/23/2016.

Effective Date: 07/22/2016.

Physical Loan Application Deadline Date: 09/20/2016.

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[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

Economic Injury (EIDL) Loan Application Deadline Date: 04/24/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Alleghany.

Contiguous Counties:

Virginia: Bath, Botetourt, Clifton Forge (City), Covington City, Craig, Rockbridge.

West Virginia: Greenbrier, Monroe.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.250
Homeowners without Credit Available Elsewhere	1.625
Businesses with Credit Available Elsewhere	6.250
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14779 B and for economic injury is 14780 0.

The States which received an EIDL Declaration # are Virginia, West Virginia.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 22, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–18023 Filed 7–28–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14777 and #14778]

Kansas Disaster # KS–00096

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Kansas dated 07/20/2016.

Incident: Tornado.

Incident Period: 07/07/2016.

Effective Date: 07/20/2016.

Physical Loan Application Deadline Date: 09/19/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 04/20/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Greenwood

Contiguous Counties:

Kansas: Butler, Chase, Coffey, Elk, Lyon, Wilson, Woodson

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.250
Homeowners Without Credit Available Elsewhere	1.625
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14777 C and for economic injury is 14778 0.

The States which received an EIDL Declaration # are Kansas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: July 20, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–18012 Filed 7–28–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14768 and #14769]

Pennsylvania Disaster # PA–00070

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of PENNSYLVANIA dated 07/19/2016.

Incident: Flash Flooding.

Incident Period: 06/17/2016.

Effective Date: 07/19/2016.

Physical Loan Application Deadline Date: 09/19/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 04/19/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fayette

Contiguous Counties:

Pennsylvania: Greene, Somerset, Washington, Westmoreland

Maryland: Garrett

West Virginia: Monongalia Preston

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.250
Homeowners Without Credit Available Elsewhere	1.625

	Percent
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14768 6 and for economic injury is 14769 0.

The States which received an EIDL Declaration # are Pennsylvania Maryland West Virginia.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: July 19, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–18017 Filed 7–28–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9655]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting on Family Law

The Office of the Assistant Legal Adviser for Private International Law, Department of State, gives notice of a public meeting to discuss a questionnaire prepared by the Permanent Bureau of the Hague Conference on Private International Law (''Hague Conference'') on the topic of international parentage and surrogacy. The public meeting will take place on Tuesday, September 13, 2016 from 1 p.m. until 5 p.m. EDT. This is not a meeting of the full Advisory Committee.

In March 2015, the Council on General Affairs and Policy (''Council'') of the Hague Conference decided that an Experts' Group should be convened to explore the feasibility of advancing work on private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements. In preparation for the second meeting of the Experts' Group, the Permanent Bureau has circulated a questionnaire seeking ideas and views from members of the Experts' Group.

The purpose of the public meeting is to obtain the views of concerned stakeholders on the questions presented in the questionnaire. A copy of the questions to be discussed will be provided to individuals who will be participating in the public meeting. Those who cannot attend but wish to comment are welcome to do so by email to Michael Coffee at *coffeems@state.gov.*

Time and Place: The meeting will take place from 1 p.m. until 5 p.m. EDT in Room 10.00, State Department Annex 17, 600 19th Street NW., Washington, DC 20522. Participants should plan to arrive at the North Entrance by 12:40 p.m. for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should email *pil@state.gov* providing full name, address, date of birth, citizenship, driver's license or passport number, and email address. This information will greatly facilitate entry into the building. A member of the public needing reasonable accommodation should email *pil@state.gov* not later than September 6, 2016. Requests made after that date will be considered, but might not be able to be fulfilled.

If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information. We ask that each person who intends to participate by telephone notify us directly so that we may ensure that we have adequate dial-in capacity.

Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities.

The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *https://foia.state.gov/_docs/SORN/State-36.pdf* for additional information.

Dated: July 20, 2016.

Michael S. Coffee,

Attorney-Adviser, Office of Private International Law, Office of the Legal Adviser, U.S. Department of State.

[FR Doc. 2016–18033 Filed 7–28–16; 8:45 am]

BILLING CODE 4710–08–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36050]

Iowa Southern Railway Company—Lease and Operation Exemption—Appanoose County Community Railroad, Inc.

Iowa Southern Railway Company (ISR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease from Appanoose County Community Railroad, Inc. (APNC) and to operate approximately 34.5 miles of rail line between milepost 0.0 in Centerville, Appanoose County, Iowa, and milepost 34.5 in Albia, Monroe County, Iowa.

This transaction is related to a concurrently filed verified notice of exemption in *Progressive Rail Incorporated—Continuance in Control Exemption—Iowa Southern Railway,* Docket No. FD 36051, wherein Progressive Rail Incorporated seeks Board approval to continue in control of ISR, upon ISR's becoming a Class III rail carrier.

ISR certifies that its projected annual revenues as a result of this transaction will not exceed $5 million or result in the creation of a Class II or Class I rail carrier. ISR states that the lease agreement does not include any provision limiting its future interchange of traffic on the line with a third-party connecting carrier.

The transaction may be consummated on or after August 13, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed). If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 5, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36050, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler and Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

According to ISR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: July 26, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2016–17991 Filed 7–28–16; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36051]

Progressive Rail Incorporated—Continuance in Control Exemption—Iowa Southern Railway Company

Progressive Rail Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Iowa Southern Railway Company (ISR), upon ISR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *Iowa Southern Railway Company—Lease & Operation Exemption—Appanoose County Community Railroad,* Docket No. FD 36050, wherein ISR seeks Board approval to lease and operate approximately 34.5 miles of rail line between milepost 0.0 in Centerville, Appanoose County, Iowa, and milepost 34.5 in Albia, Monroe County, Iowa.

The transaction may be consummated on or after August 13, 2016, the effective date of the exemption (30 days after the notice of exemption was filed).

PGR owns or operates rail lines in Minnesota, Wisconsin, and Illinois, and controls three other Class III rail carriers that operate rail lines in Minnesota, Missouri, and Iowa.

PGR represents that: (1) The rail line to be leased and operated by ISR does not connect with any of the rail lines of PGR or of the other three Class III rail carriers controlled by PGR; (2) the continuance in control is not a part of a series of anticipated transactions that would result in such a connection; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by August 5, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36051, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler and Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: July 26, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. Contee,

Clearance Clerk.

[FR Doc. 2016–17992 Filed 7–28–16; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services of the Republic of Moldova

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: On September 21, 2015, the WTO Committee on Government Procurement approved the accession of the Republic of Moldova to the World Trade Organization (WTO) Agreement on Government Procurement (GPA). The United States, which also is a party to the GPA, has agreed to waive discriminatory purchasing requirements for eligible products and suppliers of the Republic of Moldova beginning on July 14, 2016

DATES: Effective July 14, 2016.

FOR FURTHER INFORMATION CONTACT: Scott Pietan, Director of International Procurement Policy, Office of the United States Trade Representative, 202–395–9646.

SUPPLEMENTARY INFORMATION: On September 21, 2015, the WTO Committee on Government Procurement approved the accession of the Republic of Moldova to the GPA. The Republic of Moldova submitted its instrument of accession to the Secretary-General of the WTO on June 14, 2016. The GPA will enter into force for the Republic of Moldova on July 14, 2016. The United States, which also is a party to the GPA, has agreed to waive discriminatory purchasing requirements for eligible products and suppliers of the Republic of Moldova beginning on July 14, 2016.

Section 1–201 of Executive Order 12260 of December 31, 1980, delegated the functions of the President under sections 301 and 302 of the Trade Agreements Act of 1979 (the Trade Agreements Act) (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Determination

In conformity with sections 301 and 302 of the Trade Agreements Act, and in order to carry out U.S. obligations under the GPA, I hereby determine that:

1. The Republic of Moldova has become a party to the GPA and will provide appropriate reciprocal competitive government procurement opportunities to United States products and services and suppliers of such products and services. In accordance with section 301(b)(1) of the Trade Agreements Act, the Republic of Moldova is so designated for purposes of section 301(a) of the Trade Agreements Act.

2. Accordingly, beginning on July 14, 2016, with respect to eligible products of the Republic of Moldova, namely, those goods and services covered under the GPA for procurement by the United States, and suppliers of such products, the application of any law, regulation, procedure or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded:

A. to United States products and suppliers of such products, or

B. to eligible products of another foreign country or instrumentality which is a party to the GPA and suppliers of such products, shall be waived. This waiver shall be applied by all entities listed in United States Annexes 1 and 3 of GPA Appendix 1.

3. The United States Trade Representative may modify or withdraw the designation in paragraph 1 and the waiver in paragraph 2.

Michael B.G. Froman,

United States Trade Representative.

[FR Doc. 2016–17973 Filed 7–28–16; 8:45 am]

BILLING CODE 3290–F6–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) and the National Park Service (NPS) are inviting interested persons to apply to fill one upcoming opening on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). The upcoming opening will represent commercial air tour operator interests. The selected member will serve a 3-year term.

DATES: Persons interested in applying for the NPOAG opening representing air tour operator interests need to apply by August 26, 2016.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3808, email: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides "advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands."

Membership

The NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are as follows:

The current NPOAG consists of Melissa Rudinger representing general aviation; Alan Stephen, Mark Francis, and Matthew Zuccaro representing commercial air tour operators; Rob Smith, Nicholas Miller, Mark Belles, and Dick Hingson representing environmental interests; and Leigh Kuwanwisiwma and Martin Begaye representing Native American interests. Mr. Zuccaro's 3-year membership expires on September 9, 2016.

Selection

In order to retain balance within the NPOAG ARC, the FAA and NPS are seeking candidates interested in filling Mr. Zuccaro's soon to be expiring seat. The open seat to be filled will represent air tour operator interests. The FAA and NPS invite persons interested in representing air tour operator interests on the ARC to contact Mr. Keith Lusk (contact information is written above in **FOR FURTHER INFORMATION CONTACT**). Requests to serve on the ARC must be made to Mr. Lusk in writing and postmarked or emailed on or before August 26, 2016. The request should indicate whether or not you are a member of an association or firm related to the air tour industry.. The request should also state what expertise you would bring to the NPOAG ARC as related to issues and concerns with aircraft flights over national parks. The term of service for NPOAG ARC members is 3 years. Current members may re-apply for another term.

On June 18, 2010, President Obama signed a Presidential Memorandum directing agencies in the Executive Branch not to appoint or re-appoint federally registered lobbyists to advisory committees and other boards and commissions. Therefore, before appointing an applicant to serve on the NPOAG, the FAA and NPS will require the prospective candidate to certify that they are not a federally registered lobbyist.

Issued in Hawthorne, CA, on July 19, 2016.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2016–17564 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0196]

Agency Information Collection Activities; Extension of an Approved Information Collection Request: Transportation of Hazardous Materials, Highway Routing

AGENCY: FMCSA, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests approval to extend an existing ICR titled, "Transportation of Hazardous Materials, Highway Routing." The information reported by States and Indian tribes is necessary to identify designated/restricted routes and restrictions or limitations affecting how motor carriers may transport certain hazardous materials on their highways, including dates that such routes were established and information on subsequent changes or new hazardous materials routing designations.

DATES: We must receive your comments on or before September 27, 2016.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2016–0196 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent Babich, Office of Enforcement and Compliance, Hazardous Materials Division, Department of Transportation, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–4871; email *vincent.babich@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The data for the Transportation of Hazardous Materials; Highway Routing ICR is collected under authority of 49 U.S.C. 5112 and 5125. Specifically, 49 U.S.C. 5112(c) requires that the Secretary, in coordination with the States, "shall update and publish periodically a list of currently effective hazardous material highway route designations."

In 49 CFR 397.73, the FMCSA requires that each State and Indian tribe, through its routing agency, provide information identifying new, or changes to existing, hazardous materials routing designations within its jurisdiction within 60 days after their establishment (or 60 days of the change). That information is collected and consolidated by FMCSA and published annually, in whole or as updates, in the **Federal Register**.

Title: Transportation of Hazardous Materials, Highway Routing.

OMB Control Number: 2126–0014.

Type of Request: Extension of a currently-approved information collection.

Respondents: The reporting burden is shared by 50 States, the District of Columbia, Indian tribes with designated routes, and U.S. Territories including; Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

Estimated Number of Respondents: 57 [36 States and the District of Columbia, with designated hazardous materials highway routes + 20 States/U.S. Territories without designated hazardous materials highway routes + 1 Indian tribe with a designated route = 57].

Estimated Time per Response: 15 minutes.

Expiration Date: None.

Frequency of Response: Once every two years.

Estimated Total Annual Burden: 7 hours [57 annual respondents × 1 response per 2 years × 15 minutes per response/60 minutes per response = 7.125 hours rounded to 7 hours].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on: July 21, 2016.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2016–17974 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Transit Administration

Notice of Funding Opportunity for FY 2017 Positive Train Control Grant Funds

AGENCY: Federal Railroad Administration (FRA) and Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice details the application requirements and procedures to obtain funding for the installation of Positive Train Control (PTC) systems required under the Railroad Safety Improvement Act of 2008, as amended by the Positive Train Control Enforcement and Implementation Act of 2015. The opportunities described in this notice are available under Catalog of Federal Domestic Assistance number 20.321, "Positive Train Control."

FRA will review applications for funding under this NOFO and will select the projects for funding. FTA will award the grant funds and administer and manage the grants after award. FRA will help FTA monitor the PTC implementation and progress of the grantees. In addition, applicants should contact FRA with PTC technical questions.

DATES: Applications for funding under this solicitation are due no later than 5:00 p.m. EDT, September 27, 2016. Applications for funding received after 5:00 p.m. EDT on September 27, 2016 will not be considered for funding. See Section 4 of this notice for additional information on the application process.

ADDRESSES: Applications must be submitted via *Grants.gov.* For any required or supporting application materials that an applicant is unable to submit via *Grants.gov* (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., Room W36–412, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials.

FOR FURTHER INFORMATION CONTACT: If you have a PTC project related question, you may contact Dr. Mark Hartong, Senior Scientific Technical Advisor, Federal Railroad Administration (phone: (202) 493–1332; email: *mark.hartong@dot.gov*), or Mr. Devin Rouse, Program Manager, Federal Railroad Administration (phone: (202) 493–6185, email: *devin.rouse@dot.gov*). Grant application submission and processing questions should be addressed to Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration (1200 New Jersey Avenue SE., Room W36–412, Washington, DC 20590; email: *amy.houser@dot.gov*). For questions regarding FTA administration of grants awarded under this competition, contact Mr. Eric Hu, Office of Program Management, Federal Transit Administration (phone: (202) 366–0870; email: *eric.hu@dot.gov*).

SUPPLEMENTARY INFORMATION:

Notice to applicants: FRA and FTA recommend applicants read this notice in its entirety prior to preparing application materials. There are several administrative prerequisites described herein that applicants must comply with to submit an application and specific eligibility requirements applicants must meet. Additionally, applicants should note that the required Project Narrative component of the application package may not exceed 25 pages in length (including any appendices).

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1. Program Description
2. Federal Award Information
3. Eligibility Information
4. Application and Submission Information
5. Application Review
6. Federal Award Administration
7. Federal Awarding Agency Contacts

Section 1: Program Description

The purpose of this notice is to solicit applications for grants to assist financing the installation of PTC systems required under 49 U.S.C. 20157 (Implementation of positive train control systems). The maximum $197.01 million of funding available under this NOFO after approximately $2 million is set aside for program oversight is authorized by section 3028 of the Fixing America's Surface Transportation (FAST) Act (Public Law 114–94). All projects that receive funding under this notice must comply with the applicable requirements of 49 U.S.C. 20157 and 49 CFR part 236, subpart I, including 236.1005 (Requirements for Positive Train Control Systems). The funding described in this notice is authorized to be appropriated for Federal Fiscal Year 2017 beginning October 1, 2016. Funding allocations made under this notice are subject to the availability of funds.

Section 2: Federal Award Information

The maximum funding authorized under this NOFO is $197.01 million after approximately $2 million is set aside for program oversight per the FAST Act. Per the FAST Act, FRA anticipates selecting multiple projects for the funding made available in this notice, and is not predetermining any minimum or maximum dollar amounts for awards. However, given the limited amount of funding currently available, applicants are encouraged to identify scalable project phases or elements that would result in the installation of components necessary for the deployment of a PTC system required under 49 U.S.C. 20157, because FRA may choose to make project selections for less than the total amount requested in the application.

Section 3: Eligibility Information

This section of the notice explains the requirements for submitting an eligible grant application. Applications that do not meet the requirements in this section will be considered ineligible for funding. Instructions for conveying eligibility information to FRA are detailed in Section 4 of this NOFO.

3.1 Applicant Eligibility

Eligible applicants for PTC system funding under this notice are entities that are recipients of funds under 49 U.S.C. Chapter 53.

a. This includes, but is not limited to, the following entities:

i. Public transit agencies operating commuter railroads; and

ii. State and local governments.

b. Applicants must:

i. Have submitted a revised Positive Train Control Implementation Plan (PTCIP) to FRA as required by 49 U.S.C. 20157(a); or

ii. Be tenants on one or more host railroads whose host railroad(s) have submitted a revised PTCIP as required by 49 U.S.C. 20157(a).

c. An applicant who has not submitted a revised PTCIP to FRA as required by 49 U.S.C. 20157(a), and is not a tenant on one or more host railroads who have submitted a revised PTCIP as required by 49 U.S.C. 20157(a), may be eligible for funding under this notice if the applicant can demonstrate to FRA's satisfaction in the grant application that the:

i. Applicant is not required to submit a revised PTCIP as required by 49 U.S.C. 20157(a); and

ii. Proposed project will assist in financing the installation of a PTC system required under 49 U.S.C. 20157.

3.2 Project Eligibility

Projects eligible for funding under this NOFO must help install PTC systems required under 49 U.S.C. 20157. The capital costs of PTC systems installation would be eligible project activities including but not limited to: Back office systems; wayside, communications and onboard hardware equipment, software; equipment installation; and spectrum acquisition.

Examples of eligible PTC system projects include the following:

a. Installation of PTC systems;

b. Installation of shared PTC system infrastructure (*e.g.,* back office systems and computer-aided dispatch (CAD) systems);

c. Advancement of PTC system interoperability related to installation, such as spectrum acquisition, spectrum sharing, and radio interference and desensitization;

d. Installation of technologies that will lower costs, accelerate PTC implementation, increase interoperability between host and tenant operations, and improve reliability of PTC systems; and

e. Installation of technologies that will eliminate PTC system communications interference, provide solutions to configuration management of multi-railroad PTC software and firmware deployments, and provide host-tenant railroad PTC interoperability and PTC System Certification.

These are examples of eligible projects, and FRA will evaluate any other projects meeting the criteria of this NOFO for eligibility and consideration for award.

Preventive maintenance and overhaul costs, new vehicle procurement, real estate property acquisition, building construction and acquisition, and operating expenses are not eligible costs under this NOFO.

3.3 Cost Eligibility

Funds awarded under this notice must not exceed 80 percent of the total cost of a project. The required 20 percent non-Federal share may be comprised of public sector (state or local) or private sector funding. However, FRA will not consider any other Federal grant funds, nor any non-Federal funds already expended (or otherwise encumbered), towards the matching requirement. FRA is limiting the method for calculating the non-Federal match to cash contributions only—FRA will not accept "in-kind" contributions and transportation development credits. FRA will consider non-Federal matching funds exceeding the minimum requirement when evaluating the merit of an application.

Section 4: Application and Submission Information

4.1 Submission Dates and Times

Applicants must submit complete applications to *Grants.gov* no later than 5:00 p.m. EDT, September 27, 2016. Delayed registration is not an acceptable reason for late submission. In order to apply for funding under this announcement, all applicants are expected to be registered as an organization with *Grants.gov.* Applicants are strongly encouraged to apply early to ensure that all materials are received before this deadline. Late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner will not be considered.

4.2 Application Content

Applicants should read this section carefully and must submit all required information.

Project Narrative

This section describes the minimum content required in the Project Narrative component of grant applications (FRA also recommends the Project Narrative generally adhere to the following outline). These requirements must be satisfied through a narrative statement submitted by the applicant, and may be supported by spreadsheet documents, tables, maps, drawings, and other materials, as appropriate. The Project Narrative may not exceed 25 pages in length (including any appendices). FRA will not review or consider for award applications with Project Narratives exceeding the 25 page limitation.

a. The Project Narrative must:

i. Include a title page that lists the following elements in either a table or formatted list: Project title; location (*i.e.,* city, State, Congressional district); applicant organization name; name of any co-applicants; amount of Federal funding requested; and proposed non-Federal match;

ii. Designate a point of contact for the applicant and provide his or her name and contact information, including phone number, mailing address, and email address. The point of contact must be an employee of an eligible applicant;

iii. Indicate the amount of Federal funding requested, the proposed non-Federal match, and total project cost. Additionally, identify any other sources of Federal funds committed to the project and any pending Federal requests. You must also note if the requested Federal funding must be obligated or spent by a certain date due to dependencies or relationships with other Federal or non-Federal funding sources, related projects, law, or other factors. Finally, specify whether you ever previously sought Federal funding for the project, and name the Federal program and fiscal year for the funding request;

iv. Explain how the applicant meets the applicant eligibility criteria outlined in Section 3 of this notice;

v. Provide a brief 4–6 sentence summary of the proposed project, capturing the PTC challenges the proposed project aims to address, as well as the intended outcomes and anticipated benefits that will result from the proposed project;

vi. Include a detailed project description that expands upon the brief summary required above. This detailed description should provide, at a minimum, additional background on the PTC challenges the project aims to address, the expected users and beneficiaries of the project, the specific components and elements of the project, and any other information the applicant deems necessary to justify the proposed project. The detailed description should also clearly explain how the proposed project meets the project eligibility criteria in Section 3 of this notice;

vii. Include a thorough discussion of how the proposed project meets all of the evaluation criteria for the respective project type, as outlined in Section 5 of this notice. Applicants should note that FRA reviews applications based upon the evaluation criteria. If an application does not sufficiently address the evaluation criteria, it is unlikely to be a competitive application. In responding to the criteria, applicants should clearly identify, quantify, and compare expected benefits and costs of proposed projects;

viii. Describe proposed project implementation and project management arrangements. Include descriptions of the expected arrangements for project contracting, contract oversight, change-order management, risk management, and conformance to Federal requirements for project progress reporting.

Additional Application Elements

b. Applicants must:

i. Submit a Statement of Work (SOW) that addresses the scope, schedule, and budget for the proposed project if it were selected for award. The SOW must contain sufficient detail so that FRA and FTA, and the applicant, can understand the expected outcomes of the proposed work to be performed and monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance. FRA developed a standard SOW template that applicants must use to be considered for award. The SOW templates and other required forms are located at *http://www.fra.dot.gov/Page/P0021.*

ii. Describe anticipated environmental and historic preservation impacts associated with the proposed project, any environmental or historic preservation analyses that have been prepared, and progress toward completing any environmental documentation or clearance required for the proposed project under the National Environmental Policy Act (NEPA), the National Historic Preservation Act, section 4(f) of the U.S. DOT Act, the Clean Water Act, and other applicable Federal or State laws such as the FCC requirements for antenna transmission. Applicants are encouraged to contact FTA and obtain preliminary direction regarding the appropriate NEPA action and required environmental documentation. Generally, projects will be ineligible to receive funding if they have begun construction activities prior to the applicant receiving written approval from FTA that all environmental and historical analyses have been completed. Additional information regarding FTA's environmental processes and requirements are located at *https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/environmental-analysis-review.*

iii. Submit an SF 424A—Budget Information for Non-Construction or SF 424C.

iv. Budget Information for Construction;

v. Submit an SF 424B—Assurances for Non-Construction or SF 424D—Assurances for Construction; and

vi. Submit an SF LLL: Disclosure of Lobbying Activities.

4.3 Submission Instructions

To apply for funding through *Grants.gov,* applicants must be properly registered. Complete instructions on how to register and submit an application can be found at *Grants.gov.* Registering with *Grants.gov* is a onetime process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension. (Please note that if a Dun &

Bradstreet (DUNS) number must be obtained or renewed, this may take a significant amount of time to complete.) Late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner will not be considered.

Required documents for the application package are outlined in the following paragraphs. Applicants must complete and submit all components of the application package. FRA welcomes the submission of other relevant supporting documentation that may have been developed by the applicant (planning, engineering and design documentation, and letters of support). In particular, applications accompanied by completed feasibility studies and cost estimates may be more favorably considered during the evaluation process, as they demonstrate that an applicant has a greater understanding of the scope and cost of the project.

Applicants must submit all application materials through *Grants.gov*. For any required or supporting application materials that an applicant cannot submit via *Grants.gov* (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., Room W36–412, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, FRA advises applicants to use other means of conveyance (such as courier service) to assure timely receipt of materials. Additionally, if documents can be obtained online, explaining to FRA how to access files on a referenced Web site may also be sufficient.

4.4 *Funding Restrictions*

Use of Grant Funds for Federal Credit Assistance

At the request of an eligible applicant under Section 3 of this NOFO, and subject to DOT approval and any applicable laws that may otherwise prohibit using Federal grant funds in such a manner, amounts awarded to an eligible applicant under this grant may be used to pay certain costs applicants incur under sections 502 through 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801, *et seq.*) (Railroad Rehabilitation and Improvement Financing (RRIF) program). Requirements to use the grant money awarded under this NOFO for RRIF costs are explained further below.

In general, the RRIF program provides loans and loan guarantees to finance railroad and intermodal equipment and infrastructure, including PTC installation. Under the RRIF program, a RRIF loan applicant or other non-Federal source must pay a Credit Risk Premium (CRP) assessed based on the overall risk of each transaction. In addition, the RRIF applicant pays an evaluation charge to reimburse the Secretary for costs incurred to administer the program, including financial and legal advice (administrative costs).

Eligible applicants may use amounts awarded under this NOFO to pay the RRIF CRP and/or administrative costs associated with a RRIF loan or loan guarantee made to finance the same PTC system installation project for which the grant under this NOFO was awarded.

To be clear, the funds made available under this NOFO may only be used to finance the installation of PTC systems required under 49 U.S.C. 20157.

Availability

The grant funds made available under this NOFO must be obligated in a grant agreement no later than September 30, 2018. Therefore, for an eligible applicant to use grant funds to pay the CRP and/or administrative costs associated with a RRIF loan or loan guarantee, the applicable loan or loan guarantee must be executed by September 30, 2018. Subsidy and administrative costs associated with a RRIF loan or loan guarantee agreement that is not executed by September 30, 2018 are not eligible for funding under this NOFO.

Section 5: Application Review

FRA will conduct a three-part application review process, as follows:

a. Screen applications for completeness and eligibility;

b. Evaluate eligible applications (completed by technical panels applying the evaluation criteria); and

c. Select projects for funding (completed by the FRA Administrator applying additional selection criteria).

5.1 *Intake and Eligibility*

FRA first will screen each application for eligibility (eligibility requirements are outlined in Section 3 of this notice) and completeness (application documentation and submission requirements are outlined in Section 4 of this notice). FRA-led technical panels of subject-matter experts will evaluate all eligible and complete applications using the evaluation criteria outlined in this section. The FRA Administrator then will select for funding the projects that are well-aligned with one or more of the evaluation and selection criteria.

5.2 *Evaluation Criteria*

FRA will give preference to applicants that can demonstrate an ability to substantially complete the project work, or otherwise provide benefits to industry, prior to the statutory deadlines the Positive Train Control Enforcement and Implementation Act of 2015 (PTCEI Act) established. The PTCEI Act extended the statutory deadline for implementation of PTC systems to at least December 31, 2018, and allows railroads to request approval from FRA for an extension beyond December 31, 2018, but no later than December 31, 2020, for implementation of certain operational, non-hardware aspects of PTC systems, upon completion of statutory prerequisites. FRA will review applications using the following four evaluation criteria:

- Accrued safety benefits;
- Expeditious PTC system deployment;
- Technical merit; and
- Project development approach.

a. Accrued Safety Benefits

FRA will consider a proposed project's accrued safety benefits, including the following factors:

i. The number of passengers for which the proposed project will improve safety by reducing the threat of train-to-train collisions, over speed derailments, incursions into established work zone limits, and the movement of a train through a misaligned switch; and

ii. The number of miles of roadway work zones protected by the proposed project.

b. Expeditious PTC System Deployment

FRA will consider a proposed project's achievement of expeditious PTC system deployment, including the following factors:

i. The degree to which the proposed project expedites the installation of the PTC system;

ii. The degree to which the proposed project expedites testing and certification of the PTC system; and

iii. The ability for the proposed project to maintain the railroad's PTC system implementation timeline or reduce/eliminate schedule risks.

c. Technical Merit

FRA will consider a proposed project's technical merit, including the following factors:

i. The degree to which the proposed project exhibits a sound scientific and engineering basis;

ii. The degree to which the proposed project is practically applied in and compatible with the railroad's operating environment and infrastructure; and

iii. The likelihood of technical and practical success.

d. Project Development Approach

FRA will consider a proposed project's project development approach, including the following factors:

i. The technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts, and the qualifications of the primary and supporting organizations to fully and successfully execute the proposed project within the proposed timeframe and budget;

ii. The degree to which proposed project is supported by multiple entities (letters of support are encouraged);

iii. The affordability and degree to which the proposed project is a good value for the amount of funding requested. Good value means the goods/services received are worth the price paid. (Examples of the types of factors that may be considered include, but are not limited to, suitability, quality, skills, price, and life-cycle cost. The mix of these and other factors and the relevant importance of each will vary on a case by case basis);

iv. The reasonableness of the proposed costs; and

v. The extent of proposed cost sharing or cost participation (exclusive of the applicant's prior investment).

5.3 Selection Criteria

In addition to the evaluation criteria, the FRA Administrator will apply the following four selection criteria to further ensure that the projects selected for funding advance FRA's current PTC mission and key priorities:

- Alignment with DOT strategic goals and priorities;
- Project delivery performance;
- Region/location; and
- Innovation/resource development.

a. Alignment With DOT Strategic Goals and Priorities

i. Improving transportation safety;

ii. Maintaining transportation infrastructure in a state of good repair;

iii. Promoting economic competitiveness;

iv. Advancing environmentally sustainable transportation policies;

v. Enhancing quality of life; and

vi. Building ladders of opportunity to expand the middle class.

Proposed projects that demonstrate the ability to provide reliable, safe and affordable transportation choices to connect economically disadvantaged populations, non-drivers, senior citizens, and persons with disabilities in disconnected communities with employment, training and education will receive particular consideration during project selection.

b. Project Delivery Performance

i. The applicant's track record in successfully delivering previous DOT grants on time, on budget, and for the full intended scope;

ii. The applicant's means for achieving satisfactory continuing control over project assets in a timely manner, including public ownership of project assets or agreements with commuter railroad operators and infrastructure owners at the time of application; and

iii. The extent to which the proposed project complements previous DOT awards.

c. Region/Location

i. The extent to which the proposed project increases the economic productivity of land, capital, or labor at specific locations, particularly in economically distressed areas;

ii. Ensuring appropriate level of regional balance across the country;

iii. Ensuring consistency with national transportation and rail network objectives; and

iv. Ensuring integration with other rail services and transportation modes.

d. Innovation/Resource Development

i. Promoting innovations that demonstrate the value of new approaches to, among other things, transportation funding and finance, contracting, project delivery, congestion management, safety management, asset management, or long-term operations and maintenance.

6. Federal Award Administration

6.1 Federal Award Notice

Final project selections will be posted on DOT, FRA, and FTA's Web sites.

6.2 Award Administration

Due to funding limitations, projects that are selected for funding may receive less than the amount originally requested. In those cases, applicants must be able to demonstrate that the proposed projects are still viable and can be completed with the amount awarded.

Federal Awardee Performance and Integrity Information System (FAPIIS) Review

Before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold (see 2 CFR 200.88 Simplified Acquisition Threshold), FTA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through the System for Award Management (SAM) (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) (see 41 U.S.C. 2313).

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

FTA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205.

6.3 Administrative and National Policy Requirements

a. Pre-Award Authority

Once selected, FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. FTA does not provide pre-award authority for discretionary funds until projects are selected and even then there are Federal requirements that must be met before costs are incurred. For more information about FTA's policy on pre-award authority, please see the FY 2016 Apportionment Notice published on February 16, 2016. *https://www.gpo.gov/fdsys/pkg/FR-2016-02-16/pdf/2016-02821.pdf.*

b. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). Recipients of PTC Funding are subject to the requirements of 49 U.S.C. Chapter 53, including FTA's Buy America requirements, Disadvantaged Business Enterprise, and Planning Requirements. All recipients must follow the Grants Management Requirements of FTA Circular 5010.1D, the labor protections of 49 U.S.C. 5333(b), and the third party procurement requirements of FTA Circular 4220.1F. All discretionary grants, regardless of award amount, will be subject to the congressional notification and release process. Technical assistance regarding these requirements is available from each FTA regional office.

c. Standard Assurances

The applicant must assure it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant must acknowledge that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant must agree that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

d. Reporting

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Progress Reports in TrAMS.

e. Technical Assistance and Other Program Information

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." FRA will consider applications for funding only from eligible recipients as explained in Section 3.

7. Federal Awarding Agency Contacts

If you have a PTC technical project related question, you may contact Dr. Mark Hartong, Senior Scientific Technical Advisor (phone: (202) 493–1332; email: *mark.hartong@dot.gov*), or Mr. Devin Rouse, Program Manager (phone: (202) 493–6185, email: *devin.rouse@dot.gov.*) Grant application submission and processing questions should be addressed to Ms. Amy Houser, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE., Room W36–412, Washington, DC 20590; email: *amy.houser@dot.gov.*

For questions relating to grant requirements, please contact Eric Hu, Program Manager, Urban Programs (phone: (202) 366–0870, email *eric.hu@dot.gov*). FTA grantees may also contact their FTA regional office. Contact for FTA's regional offices can be found on FTA's Web site at: *https://www.transit.dot.gov/about/regional-offices/regional-offices.*

Information Collection: The Office of Management and Budget (OMB) approved the information collection associated with the PTC Grants Program. The approval number for this collection of information is OMB No. 2130–0587.

Issued in Washington, DC on July 21, 2016.

Carolyn Flowers,
Acting Administrator, FTA.

Sarah E. Feinberg,
Administrator, FRA.

[FR Doc. 2016–17943 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement Open Season

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of open season for enrollment in the VISA program.

SUMMARY: The Maritime Administration (MARAD) announces that the open season for Fiscal Year 2017 applications for participation in the Voluntary Intermodal Sealift Agreement (VISA) program will run for 30 days beginning today and ending August 29, 2016. The purpose of this notice is to invite interested, qualified U.S.-flag vessel operators that are not currently enrolled in the VISA program to apply. This is the only planned enrollment period for carriers to join the VISA program and derive benefits for Department of Defense (DOD) peacetime contracts initiated during the period from October 1, 2016, through September 30, 2017.

Any U.S.-flag vessel operator organized under the laws of a state of the United States, or the District of Columbia, who is able and willing to commit militarily useful sealift assets and assume the related consequential risks of commercial disruption, may be eligible to participate in the VISA program.

The mission of VISA is to provide commercial sealift and intermodal shipping services and systems, including access to vessels, vessel space, intermodal systems and equipment, terminal facilities, and related management services, to the Department of Defense (DOD), as necessary, to meet national defense contingency requirements or national emergencies. Carriers enrolled in the VISA program provide DOD with assured access to such services during contingencies. In return for their VISA commitment, DOD gives VISA participants priority for carriage of peacetime cargos.

DATES: VISA Program applications must be received on or before August 29, 2016.

ADDRESSES: Submit applications and questions related to this notice to William G. McDonald, Director, Office of Sealift Support, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: William G. McDonald, Director, Office of Sealift Support, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone (202) 366–0688; Fax (202) 366–5904, electronic mail to *william.g.mcdonald@dot.gov* or visit *http://www.marad.dot.gov.*

SUPPLEMENTARY INFORMATION: The VISA program was established pursuant to Section 708 of the Defense Production Act of 1950, as amended (DPA). The VISA program was created to provide for voluntary agreements for emergency preparedness programs. Pursuant to the DPA, voluntary agreements for preparedness programs, including the VISA program expire five (5) years after the date they became effective.

The VISA program is open to U.S.-flag vessel operators of oceangoing militarily useful vessels. An operator is defined as an owner or bareboat charterer of a vessel. Operators include vessel owners and bareboat charter operators if satisfactory signed agreements are in place committing the assets of the owner to VISA. Voyage and space charterers are not considered U.S.-flag vessel operators for purposes of VISA eligibility.

VISA Program

The VISA program provides for the staged, time-phased availability of participants' shipping services/systems through pre-negotiated contracts between the Government and participants. Such arrangements are jointly planned with the MARAD, the United States Transportation Command (USTRANSCOM), and participants in peacetime to allow effective and best valued use of commercial sealift capacity, provide DOD assured contingency access, and to minimize commercial disruption.

Throughout the activation of any stages of VISA, DOD may utilize voluntary commitment of sealift capacity or systems. Requests for volunteer capacity will be extended simultaneously to both participants and other carriers. First priority for utilization will be given to participants who have signed Stage I and/or Stage II contracts and are capable of meeting the operational requirements. Participants providing voluntary capacity may request USTRANSCOM to activate their pre-negotiated contingency contracts. To the maximum extent possible, USTRANSCOM, where appropriate, shall support such requests. Volunteered capacity will be credited against participants' staged commitments, in the event such stages are subsequently activated.

There are three time-phased stages in the event of VISA activation. VISA Stages I and II provide for pre-negotiated contracts between DOD and participants to provide sealift capacity to meet all projected DOD contingency requirements. These contracts are executed in accordance with approved DOD contracting methodologies. VISA Stage III provides for additional capacity to DOD when Stages I and II commitments or volunteered capacity are insufficient to meet contingency requirements, and adequate shipping services from non-participants are not available through established DOD contracting practices or U.S. Government treaty agreements.

Exceptions to This Open Season

The only exception to this open season period for VISA enrollment will be for a non-VISA carrier that reflags a vessel into U.S. registry. That carrier may submit an application to participate in the VISA program at any time upon completion of reflagging.

Advantages of Peacetime Participation

In return for their VISA commitment, DOD awards peacetime cargo contracts to VISA participants on a priority basis. Award of DOD cargoes to meet DOD peacetime and contingency requirements is made on the basis of the following priorities: U.S.-flag vessel capacity operated by VISA participants and U.S.-flag Vessel Sharing Agreement (VSA) capacity held by VISA participants; U.S.-flag vessel capacity operated by non-participants; Combination U.S.-flag/foreign-flag vessel capacity operated by VISA participants, and combination U.S.-flag/foreign-flag VSA capacity held by VISA participants; Combination U.S.-flag/foreign-flag vessel capacity operated by non-participants; U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by VISA participants; U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by non-participants; and Foreign-owned or operated foreign-flag vessel capacity of non-participants.

Participation

Applicants must provide satisfactory evidence that the vessels being committed to the VISA program are operational and are intended to be operated by the applicant in the carriage of commercial or government preference cargoes. Operator is defined as an ocean common carrier or contract carrier that owns, controls or manages vessels by which ocean transportation is provided. While vessel brokers, freight forwarders, and agents play an important role as a conduit to locate and secure appropriate vessels for the carriage of DOD cargo, they are not eligible to participate in the VISA program due to lack of requisite vessel ownership or operation.

Commitment

Any U.S.-flag vessel operator desiring to receive priority consideration for DOD peacetime contracts must enroll their entire U.S.-flag militarily useful capacity and associated services in the VISA program and commit no less than 50 percent of its total U.S.-flag capacity in Stage III of the VISA program. Participants operating vessels in international trade may receive top tier consideration in the award of DOD peacetime contracts by committing the minimum percentages of capacity to all three stages of VISA (Stage I—15%, Stage II—40%, Stage III—50%) or bottom tier consideration by committing the minimum percentage (50%) of capacity to only Stage III of VISA. USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse national economic impact. To minimize domestic commercial disruption, participants operating vessels exclusively in the domestic coastwise trades (Jones Act) are not required to commit the capacity of those U.S. domestic trading vessels to VISA Stages I and II but will be required to commit 50% of that capacity in Stage III. Overall VISA commitment requirements are based on annual enrollment.

In order to protect a U.S.-flag vessel operator's market share during contingency activation, VISA allows participants to join with other vessel operators in Carrier Coordination Agreements (CCAs) to satisfy commercial or DOD requirements. VISA provides a defense against antitrust laws in accordance with the DPA. CCAs must be submitted to the MARAD for coordination with the Department of Justice for approval, before they can be utilized.

Vessel Position Reporting

If VISA applicants have the capability to track their vessels, they must include the tracking system used in their VISA application. Such applicants are required to provide MARAD access to their vessel tracking systems upon approval of their VISA application. If VISA applicants do not have a tracking system, they must indicate this in their VISA application. The VISA program requires enrolled ships to comply with 46 CFR part 307, Establishment of Mandatory Position Reporting System for Vessels.

Compensation

In addition to receiving priority in the award of DOD peacetime cargo, a participant will receive compensation during contingency activation for that capacity activated under Stage I, II and III. The amount of compensation will depend on the Stage at which capacity is activated. During enrollment, each participant must select one of several compensation methodologies. The compensation methodology selection will be completed with USTRANSCOM resulting in prices in contingency contracts between DOD and the participant. Participants providing voluntary capacity may request USTRANSCOM to activate their pre-negotiated contingency contracts; to the maximum extent possible, USTRANSCOM, where appropriate, will support such requests. Volunteered capacity will be credited against participants' staged commitments, in the event such stages are subsequently activated.

Security Clearances

All VISA applicants accepted for participation not having a Facility Security Clearance (FCL) will be required to pursue the facility clearance process with the Defense Security Service (DSS) within 45 days. If the accepted applicant does not have a facility clearance, MARAD will initiate the clearance process with DSS. Participants must have a FCL and a key representative of the company must have an individual security clearance, at a minimum of SECRET level, in order for them to participate in the VISA Joint Planning Advisory Group (JPAG) meetings and to meet VISA contingency contract obligations. One of the objectives of the JPAG is to provide the USTRANSCOM, MARAD and VISA participants with a planning forum to analyze DOD contingency sealift/intermodal service and resource requirements against industry commitments. JPAG meetings are often

SECRET classified sessions. Eligibility for VISA participation will be terminated if a key representative does not have a clearance, an applicant is rejected for a facility clearance by DSS, or the applicant fails to complete the clearance process in a timely manner.

Application for VISA Participation

New applicants may apply to participate by obtaining a VISA application package (Form MA–1020 (OMB Approval No. 2133–0532)) from the Director, Office of Sealift Support. Form MA–1020 includes instructions for completing and submitting the application, blank VISA Application forms and a request for information regarding the operations and U.S. citizenship of the applicant company. A copy of the VISA document as published in the **Federal Register** on October 29, 2014 will also be provided with the package. This information is needed in order to assist MARAD in making a determination of the applicant's eligibility. An applicant company must provide an affidavit that demonstrates that the company is qualified to document a vessel under 46 U.S.C. 12103, and that it owns, or bareboat charters and controls, oceangoing, militarily useful vessel(s) for purposes of committing assets to the VISA program.

New VISA applicants are required to submit their applications for the VISA program as described in this Notice no later than 30 days after the date of publication of this **Federal Register** notice. Applicants must provide the following: U.S. citizenship documentation; Copy of their Articles of Incorporation and/or By Laws; Copies of loadline documents from a recognized classification society to validate oceangoing vessel capability; U.S. Coast Guard Certificates of Documentation for all vessels in their fleet; Copy of Bareboat Charters, if applicable, valid through the period of enrollment, which state that the owner will not interfere with the charterer's obligation to commit chartered vessel(s) to the VISA program for the duration of the charter; and Copy of Time Charters, valid through the period of enrollment for tug services if sufficient tug service is not owned or bareboat chartered by the barge operator. Tug/Barge operators must provide evidence to MARAD that tug service of sufficient horsepower will be available for all barges enrolled in the VISA program.

Once MARAD has reviewed the application and determined VISA eligibility, MARAD will sign the VISA application document which completes the eligibility phase of the VISA enrollment process. Approved VISA participants will be responsible for ensuring that information submitted with their application remains up to date after the approval process. If charter agreements are due to expire, participants must provide MARAD with charters that extend the charter duration for another 12 months or longer.

After VISA eligibility is approved by MARAD, approved applicants are required to execute a VISA Contingency Contract with the USTRANSCOM in a timely manner. The USTRANSCOM VISA Contingency Contract will specify the following: Participant's Stage III commitment, and appropriate Stage I and/or II commitments for the period October 1, 2016 through September 30, 2017; Drytime Contingency terms and conditions; and Liner Contingency terms and conditions, if applicable. If any change is expected in the Contractor's U.S. flag fleet during the period of the applicable VISA Contingency Contract, a minimum 30-day notice shall be provided to MARAD and USTRANSCOM identifying the change and to alter the VISA Capacity Commitment indicated on Attachment 1 of the VISA Contingency Contract.

Execution of the USTRANSCOM VISA Contingency Contract completes the enrollment process and establishes the approved applicant as a VISA Participant. The Maritime Administration reserves the right to revalidate all eligibility requirements without notice. USTRANSCOM reserves the right to revalidate eligibility for VISA priority for DOD business at any time without notice.

Authority: 49 CFR Sections 1.92 and 1.93.

* * * * *

By Order of the Maritime Administrator.

Dated: July 25, 2016.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–17888 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA—2016–0080]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America waiver.

SUMMARY: This notice provides NHTSA's finding with respect to a request to waive the requirements of Buy America from the New Hampshire Office of Highway Safety (New Hampshire). NHTSA finds that a non-availability waiver of the Buy America requirement is appropriate for the purchase of five (5) Sokia SX Robotic total stations using Federal highway traffic safety grant funds because there are no suitable products produced in the United States.

DATES: The effective date of this waiver is August 15, 2016. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: August 15, 2016.

ADDRESSES: Written comments may be submitted using any one of the following methods:

- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 493–2251.
- *Internet:* To submit comments electronically, go to the Federal regulations Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may also call the Docket at 202–366–9324.

FOR FURTHER INFORMATION CONTACT: For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202–366–0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This notice provides NHTSA's finding that a waiver of the Buy America requirement, 23 U.S.C. 313, is appropriate for New Hampshire to purchase five (5) Sokia SX Robotic total stations. The cost for all five stations amount to $135,000 using grant funds authorized under 23 U.S.C. 402 and 405(d). Section 402 funds are available for use by state highway safety programs that, among other things, reduce or prevent injuries and deaths resulting from speeding motor vehicles, driving while impaired by alcohol and or drugs, motorcycle accidents, school bus accidents, unsafe driving behavior and improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures. 23 U.S.C. 402(a). Section 402 funds are also available to states for accident investigations to determine the probable causes of accidents, injuries and deaths. *Id.* Section 405(d) funds are available for section 402 activities provided that a State has adopted and is enforcing a mandatory alcohol-ignition interlock law for all individuals convicted of driving under the influence of alcohol or of driving while intoxicated. 23 U.S.C. 405(d)(6).

Buy America provides that NHTSA "shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States." 23 U.S.C. 313. However, NHTSA may waive those requirements if "(1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent." 23 U.S.C. 313(b).

New Hampshire seeks a waiver to purchase five (5) Sokia SX Robotic total stations for the New Hampshire State Police, Collision Analysis and Reconstruction Division using Federal grant funds at a cost of $135,000 for all five. A total station is an electronic/optical instrument used in modern surveying and accident reconstruction. Specifically, a total station is an electronic theodolite integrated with an electronic distance meter to read slope distances from the instrument to a particular point. According to New Hampshire, a total station is an important piece of forensic mapping equipment that is used as an on-scene reconstruction tool that assists in determining the cause of a crash and can support crash investigations in a timely, efficient manner, allowing for quicker highway clearance and traffic flow. The total station is designed to gather evidence of events, leading up to, during and following a crash.

New Hampshire notes that there are three types of total stations: Basic, Reflectorless and Robotic. A basic total station consists of a control head, prism (reflector), data collector, and requires two people to operate. A reflectorless total station contains the same equipment, but, it can be used without the prism in a single person operation that still requires manual operation. The robotic total station contains some of the same equipment as the basic and reflectorless total stations, however, the control head is robotic and motorized allowing it to track the prism and focus automatically making the robotic total station easy to use by one individual without having to operate it manually.

Based upon its experience, New Hampshire states that the Sokkia Robotic Total Station is the most efficient piece of equipment to complete investigations, clear highways, and continue the normal flow of traffic. New Hampshire adds that the robotic total station is twice as fast as the basic and reflectorless total stations.

New Hampshire asserts that there are no total station models that are manufactured or assembled in the United States. In support of its waiver, New Hampshire states it conducted extensive due diligence and found there are no robotic total station models that are manufactured or assembled in the United States.

On November 19, 2015, NHTSA published its decision to waive the requirements of Buy America for the North Carolina Highway Safety Office to purchase a Nikon Nivo 5M plus Reflectorless total station. *See* 80 FR 72480. In that notice, the agency noted that both North Carolina and NHTSA performed market analyses which revealed that all total station equipment are foreign made.[1] *Id.* at 72481. On March 10, 2016, NHTSA published its determination that it was appropriate to grant a waiver from the Buy America requirements to the Maine Bureau of Highway Safety in order to purchase a Leica reflectorless total station. 81 FR 12780–81 (March 10, 2016). The agency did not receive any comments in response to these two notices that would inform it that there are domestic manufacturers of total stations. At this time, the agency is unaware of any type of total station (Basic, Reflectorless and Robotic) produced domestically.

NHTSA agrees that the total stations advance the purpose of section 402 to improve law enforcement services in motor vehicle accident prevention and post-accident reconstruction and enforcement. A total station is an on-scene reconstruction tool that assists in the determination of the cause of the crash and can support crash investigations. It is an electronic/optical instrument that specializes in surveying with tools to provide precise measurements for diagraming crash scenes, including a laser range finder and a computer to assist law enforcement to determine post-accident reconstruction. The total station system is designed to gather evidence of the events leading up to, during and following a crash. These tools are used to gather evidence to determine such facts as minimum speed at the time of a crash, the critical speed of a roadway curve, the distance a vehicle may have traveled when out of control and other factors that involve a crash investigation. In some instances, the facts collected through the use of a total station are used to form a basis of a criminal charge or evidence in a criminal prosecution.

Based upon NHTSA's recent market analysis, and lack of comment in response to our two prior notices on total stations, we are unaware of any total station equipment (Basic, Reflectorless and Robotic) that is manufactured domestically. *Ibid.* Since a total station is unavailable from a domestic manufacturer and the equipment would assist in post-accident reconstruction and enforcement to advance the purpose of 23 U.S.C. 402 and 405(d), a Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to New Hampshire in order to purchase the robotic total station equipment. This waiver applies to New Hampshire to purchase five (5) Sokia SX Robotic total stations for the purposes mentioned herein, and all other states seeking to use sections 402 and 405(d) funds for these types of total stations. This waiver is effective through fiscal year 2016 and expires at the conclusion of the fiscal year (September 30, 2016). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), NHTSA is providing this notice as its finding that a waiver of the Buy

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[1] In our November 19, 2015 notice, we noted that the combined market research of North Carolina and NHTSA found that the following manufacturers produced foreign made total stations: CT Berger (China); Leica (Switzerland); Nikon (Japan); Spectra Precision (Japan); Northwest Instruments (China); Topcon (Japan); Trimble (Sweden); Hi-Target Instrument Surveying Co. Ltd. (China); geo-Fennel GmbH (Germany); Hilti (Liechtenstein); North Surveying (Spain); South Precision Instrument (China); Ruide Surveying Instrument Co. (China); Pentex (Japan/China); and Topcon (Japan, China and Thailand).

America requirements is appropriate for the Sokia SX Robotic total station.

Written comments on this finding may be submitted through any of the methods discussed above. NHTSA may reconsider this finding if, through comment, it learns additional relevant information regarding its decision to grant New Hampshire's waiver request.

This finding should not be construed as an endorsement or approval of any products by NHTSA or the U.S. Department of Transportation. The United States Government does not endorse products or manufacturers.

Authority: 23 U.S.C. 313; Pub. L. 110–161.

Issued in Washington, DC on July 25, 2016 under authority delegated in 49 CFR part 1.95.

Paul A. Hemmersbaugh,

Chief Counsel.

[FR Doc. 2016–17972 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice and Request for Public Comment

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (CDFI Fund), U.S. Department of the Treasury, is soliciting comments concerning the New Markets Tax Credit (NMTC) Program Allocation Tracking System (ATS).

DATES: Written comments must be received on or before September 27, 2016 to be assured of consideration.

ADDRESSES: Submit your comments via email to David Meyer, Certification, Compliance Monitoring and Evaluation (CCME) Program Manager, CDFI Fund, at *ccme@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: David Meyer, CCME Program Manager, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220 or by facsimile to (202) 653–0375 (not a toll free number). Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's Web site at *https://www.mycdfi.cdfifund.gov/docs/2006/nmtc/2006ATSinstructions.pdf.*

SUPPLEMENTARY INFORMATION:

Title: New Markets Tax Credit Program Allocation Tracking System.

OMB Number: 1559–0024.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC § 45D, New Markets Tax Credit. Pursuant to IRC § 45D, the Department of the Treasury, through the CDFI Fund, administers the NMTC Program, which provides an incentive to investors in the form of tax credits over seven years and stimulates the provision of private investment capital that, in turn, facilitates economic and community development in low-income communities. In order to qualify for an allocation of NMTC authority, an entity must be certified as a qualified Community Development Entity and submit an allocation application to the CDFI Fund. Upon receipt of such applications, the CDFI Fund conducts a competitive review process to evaluate applications for the receipt of NMTC allocations. Entities selected to receive an NMTC allocation must enter into an allocation agreement with the CDFI Fund. The allocation agreement contains the terms and conditions, including all reporting requirements, associated with the receipt of a NMTC allocation. The CDFI Fund requires each allocatee to use an electronic data collection and submission system, known as the Allocation Tracking System (ATS), to report on the information related to its receipt of a Qualified Equity Investment.

The CDFI Fund developed the ATS to, among other things: (1) Enhance the allocatee's ability to report to the CDFI Fund timely information regarding the issuance of its Qualified Equity Investments; (2) enhance the CDFI Fund's ability to monitor the issuance of Qualified Equity Investments to ensure that no allocatee exceeds its allocation authority and to ensure that Qualified Equity Investments are issued within the timeframes required by the allocation agreement and IRC § 45D; and (3) provide the CDFI Fund with basic investor data which may be aggregated and analyzed in connection with NMTC evaluation efforts.

Current Actions: Renewal of Existing Information Collection.

Type of Review: Regular Review.

Affected Public: NMTC Program allocatees.

Estimated Number of Respondents: 658.

Estimated Annual Time per Respondent: 18 hours.

Estimated Total Annual Burden Hours: 11,844 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 12 U.S.C. 4701 *et seq.;* 26 U.S.C. 45D.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2016–17916 Filed 7–28–16; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Agency Information Collection Activities; Proposals, Submissions, and Approvals

AGENCY: Community Development Financial Institutions Fund, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the CDFI Fund), the Department of the Treasury, is soliciting comments concerning modifying the Bank Enterprise Award Program (BEA Program) Report Form to a form that may be used for the Community

Development Financial Institutions Program (CDFI Program) and Native American CDFI Assistance Program (NACA Program). The form will be renamed the Uses of Award Report Form in an effort by the CDFI Fund to create uniform reporting requirements.

DATES: Written comments should be received on or before September 27, 2016 to be assured of consideration.

ADDRESSES: Submit your comments via email to Michael Banks, Associate Program Manager, CDFI Fund, at *cdfihelp@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Banks, Associate Program Manager, CDFI Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220. The Uses of Award Report Form may be obtained from the CDFI Fund's Web site at *http://www.cdfifund.gov/bea* under How to Apply Step 5: Compliance and Reporting or *http://www.cdfifund.gov/cdfi* under How to Apply Step 4: Compliance and Reporting.

SUPPLEMENTARY INFORMATION: Title: Uses of Award Report Form (formerly BEA Program Award Report Form).

OMB Number: 1559–0032.

Abstract: The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance within distressed communities and provide financial assistance to certified Community Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. Applicants submit applications and are evaluated in accordance with statutory and regulatory requirements (12 CFR 1806), and requirements that are set forth in the annual Notice of Funds Availability. The CDFI Fund requires BEA Program Award Recipients to use BEA Program Awards for BEA Program Qualified Activities, as defined in the BEA Program regulations. Recipients are required to report to the CDFI Fund on their Qualified Activities per their Assistance Agreements.

The CDFI Program is authorized by the Riegle Community Development Banking and Financial Institutions Act of 1994 (Pub. L. 103–325, 12 U.S.C. 4701 *et seq.*). The CDFI Program uses federal resources to invest in and build the capacity of CDFIs to serve low-income people and communities lacking adequate access to affordable financial products and services. The CDFI Fund created the Native Initiatives, which includes the NACA Program, to further support the creation and expansion of Native CDFIs. Through the CDFI Program and NACA Program, the CDFI Fund provides: (1) Financial Assistance (FA) awards to CDFIs and Native CDFIs that have Comprehensive Business Plans for creating demonstrable community development impact through the deployment of credit, capital, and financial services within their respective Target Markets or the expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and (ii) Technical Assistance (TA) grants to CDFIs and Native CDFIs and entities proposing to become CDFIs or Native CDFIs in order to build their capacity to better address the community development and capital access needs of their existing or proposed Target Markets and/or to become certified CDFIs. CDFI Program applicants submit applications and are evaluated in accordance with statutory and regulatory requirements (12 CFR 1805), and requirements that are set forth in an annual Notice of Funds Availability. NACA Program applicants submit applications and are evaluated in accordance with requirements that are set forth in an annual Notice of Funds Availability. Recipients with FA or TA awards are required to report to the CDFI Fund on the uses of those funds per their Assistance Agreements.

In an effort to create uniformity in reporting across the CDFI Fund, the CDFI Fund seeks to revise the BEA Program Award Report Form and rename it the "Uses of Award Report Form." The BEA Program Award Report Form is currently required for Recipients of awards under the BEA Program. These revisions would allow the form to also be used by the Community Development Financial Institutions Program (CDFI Program) and Native American CDFI Assistance Program (NACA Program). This request for public comment seeks to gather information on the revised Use of Award Report Form.

Current Actions: Renewal and revision of an existing Information Collection.

Type of Review: Regular Review.

Affected Public: Recipients of BEA Program awards.

Estimated Number of BEA Program Respondents: 80.

Estimated Annual Time per BEA Program Respondent: 1 hour.

Affected Public: Recipients of CDFI or NACA Program awards.

Estimated Number of CDFI and NACA Program Respondents: 245.

Estimated Annual Time CDFI and NACA Program per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 325 hours.

Requests For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record and will be published on the CDFI Fund Web site at *http://www.cdfifund.gov.*

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collections of information displays a valid OMB control number.

Authority: 12 U.S.C. 4704, 4713; 12 CFR parts 1805 and 1806.

Mary Ann Donovan,
Director, Community Development Financial Institutions Fund.

[FR Doc. 2016–17996 Filed 7–28–16; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Margin and Capital Requirements for Covered Swap Entities: Exemptions

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently

valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, "Margin and Capital Requirements for Covered Swap Entities: Exemptions." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before August 29, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0335, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0335, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by email to: *oira submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting that OMB extend its approval of the following information collection.

In connection with issuance of the interim final rule entitled "Margin and Capital Requirements for Covered Swap Entities,"[1] OMB provided a six-month approval for this information collection. The OCC is proposing to extend OMB approval of the collection for the standard three years.

Title: Margin and Capital Requirements for Covered Swap Entities: Exemptions.

OMB Control No.: 1557–0335.

Description: The OCC issued an interim final rule required by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA).[2] Title III of TRIPRA, the "Business Risk Mitigation and Price Stabilization Act of 2015," amends the statutory provisions added by the Dodd-Frank Act relating to margin requirements for non-cleared swaps and non-cleared security-based swaps. Section 302 of TRIPRA amends sections 731 and 764 of the Dodd-Frank Act to provide that the initial and variation margin requirements do not apply to certain transactions with specified counterparties that qualify for an exemption or exception from clearing. Non-cleared swaps and non-cleared security-based swaps that are exempt under section 302 of TRIPRA will not be subject to the Agencies'[3] rules implementing margin requirements.[4] The effect of the interim final rule is to augment provisions of the final rule published by the Agencies in November 2015[5] that allow swap entities to collect no initial or variation margin from certain "other counterparties" like commercial end-users with a provision that grants an exception from the margin requirements for certain swaps with these and certain additional counterparties.

The reporting requirements in the interim final rule are found in 12 CFR 45.1(d), which refers to other statutory provisions that set forth conditions for an exemption from clearing. Section 45.1(d)(1) provides an exemption for non-cleared swaps if one of the counterparties to the swap is not a financial entity, is using swaps to hedge or mitigate commercial risk, and notifies the Commodity Futures Trading Commission of how it generally meets its financial obligations associated with entering into non-cleared swaps. Section 45.1(d)(2) provides an exemption for security-based swaps if the counterparty notifies the Securities and Exchange Commission of how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden: 20,000.

On April 19, 2016, the OCC issued a notice for 60 days of comment concerning the collection, 81 FR 23082. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 25, 2016.

Karen Solomon,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2016–17981 Filed 7–28–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received

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[1] 80 FR 74915 (November 30, 2015).

[2] Public Law 114–1, 129 Stat. 3 (2015).

[3] The Agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency.

[4] The interim final rule is a companion rule to a final rule adopted to implement section 731 and 764 of the Dodd-Frank Act.

[5] The final rule was issued on November 30, 2015 (80 FR 74840).

information during the quarter ending June 30, 2016. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/Initials
AAL–HUSSAIN	OMAR	ABDULGADER
ACHESON	WILLIAM	GEOFFREY
ADKINS	AARON	MICHAEL
AGNELLI	VIRGINIA	ASIA
AHARONOFF	ASSAF	EFRAIM
AHRENS	PATRICIA	LOUISE
AL DOSARI	IBRAHIM	ESSA
AL GEER	AYMAN	ALI
AL–ABBOH	EINAS	ABDUL AZIZ
ALBARRAK	ZYAD	ABDULLATIF
ALBRECHT	RENATE	
ALDUWAIK	KHADIJAH	AIMAN
ALEXANDER	KIRK	BRADFORD
AL–HELAL	HUSSAIN	HAMAD
ALI	FATIMAH	NABIL
ALI TURKI	AZIZA	ISMAIL
ALJAS	VIRVE	MALLE
ALJUMAIH	WALEED	
ALLAN	JEAN	MARY
ALON	RUTH	
AL–SHAYA	MOATH	MOHAMMAD
ALSHEHRI	MOHAMMED	DHAFER
ALSHEHRI	MOHAMMED	DHAFER
AL–YAHYA	FAISAL	OTHMAN KHALID
AL–YAHYA	FARAH	OTHMAN KHALID
AL–YAHYA	YAHYA	OTHMAN KHALID
AMBROS	BARBARA	MARIA
AMIS	JOHN	MATTHEW
ANTEBI	EDITH	MARGALIT
ARAZIM	KAREN	BARTEL
ATHEY (NEE: WILLIAMS)	RHEA	MARLA DAWN ATHEY
AYAHYA	FARAH	OTHMAN KHALID
AYDIN	KURT	TURHAN
AZARIA	RACHEL	
BAKER	LAURA	LEE
BARIMAN	AHMET	BORA
BARIMAN	AHMET	BORA
BATTERJEE	ALI	ABDALMAJEED
BAUTZ	LESLI	MARIE
BEARDSHAW	VIRGINIA	
BEDOYA	MARTIN	ALEJANDRO
BELLA	ENRICO	MARIA
BELLA	FRANCESCO	GIOVANNI MARIA
BEN–MENASHE	SIGAL	
BENNETT	LOUISE	
BERMAN	ERIC	HART
BETHUNE	JOHN	STEWART
BICK	ADINA	MIRIAM
BICK	ARYEH	HAYIM
BIRKNER	ELKE	
BIRMINGHAM	STEVEN	THOMAS
BLESSLEY	THOMAS	MARR
BOESEN	CHARLES	CHRISTIAN
BOESEN	LILICE	JEANNE LESINSKI
BOGNER	EJAY	JEHUDA
BOLS	ANDREA	INGRID
BORDEN	KENNETH	MICHAEL
BORNEMANN	STEPHEN	
BOROVITZ	MOSHE	
BOSIO	SARAH	ANNE
BOURKE	ELIZABETH	DAWN
BOYLAN	ELIZABETH	AGNES
BRADLEY	AMANDA	JANE
BRANDON	JUDITH	MARIE
BRAUNSCHWEILER	PATRICIA	ANN
BREWSTER	SOPHIA	WARREN
BROMLEY–DAAVENPORT	NOCHOLAS	WALTER
BROWN	CATHERINE	ELIZABETH MARY
BROWN	JAMES	MELVILLE
BROWN	TIMOTHY	NELSON
BRYAN	ORAN	ALON

Last name	First name	Middle name/Initials
BURTON	HILARY	A
CARLIN	BARBARA	ANN
CAUSSE	OLIVIER	
CELLA (AKA: IMAMDEEN CELLA)	IMAM	
CESAR	PACIFICA	YAP
CHAMBERLIN	TILIKA	JEAN
CHAMBERS	MARGARET	FERN
CHANG	JACK	
CHANG	JEFFREY	
CHANG	RAINBOW	
CHANG	YING	HU
CHARPENTIER	MYRIAM	
CHEN	A	GUAN
CHEN	CHUN	M
CHEN	MARGARET	C
CHENG	RAYFAN	
CHISHOLM	SCOTT	MCKAY
CHOEN–MEITAR	RAVIT	
CHRISTIANSEN	BARBARA	NANEKA
CONRADI	AXEL	HEIBERG
COON	CHRISTOPHER	LEE
CORBETT	BRIAN	O
COUNE	TIFFANY	ALLISON
COUSINS	DANIEL	R
COX	FIRIND	NAMIR
COYNE	LIANA	JENNIFER
CRESSMAN	WAYNE	EVERETT
CUNNINGHAM	VICTORIA	IGOREVNA
CZERNIM	JOHANNES	BARTHOLOMAEUS
DAH HIS	MICHAEL	CHUNG
DALLAS	MICHAEL	GRAY
DAOUK	TAMARA	
DAVENPORT	KAREN	LUCILLE
DE LOES	DIANE	ISABELLE MARGARET
DE PAILHE	COMTESSE LORALINE MARIE	DE LIEDERKE
DEHNER	GABRIELE	
DELORME	TIMOTHE	MARIE
DESBOROUGH	SHIRLEY	DANKS
DICK	TODD	MICHAEL
DODDS (AKA: BURNS)	VICTORIA	ELIZABETH
DOEBBER	PHILLIP	
DONNELLY	SEBASTIAN	PETER SUMNER
DROOKER	JONATHAN	MANUEL
DUCH	CHRISTINA	ERICA
DUFF	BRUCE	G
DUMAS–STEIN	CAROLINE	TESSA
EGAN	JOSEPH	FRANKLIN
EHRLICH	DAVID	STUART
EL GAREM	MARWAN	RIAD
ELDOR	KAREN	
EL–HOSS	SALEM	JABER
ENGEL	MARTIN	TOBIAS
ESTERSON	AKIVA	ELISHAMA
FAJARDO	WANDA	DOLORES
FAN	RYAN	JIU SHIN
FANGER	RUDOLF	HEINRICH
FARARO	RAMONA	MICHELE
FENWICK	THOMAS	CHARLES
FISHER	CHARLES	RICHARD JOHN
FISHER	VIRGINIA	ANN MARIE
FITZPATRICK	MICHAEL	ANDREW
FLINN	MICHELE	MOIRA
FLUECK	DAVID	C
FOA–SACRANIE	LIA	GIANNA
FOLONARI SCOTTI	ANTONELLA	
FOO	MAW	DER
FORREST NIELSEN	JANICE	
FORSYTH	CHLOE	NICOLE
FORTUNE	TRACY	LYNNE
FOSTER	LENORE	ELIZABETH
FOX	STEPHANIE	RUTH
FRANKFURTER	DAVID	ARTHUR
FRAUCHE	DEBORAH	LYNN
FREEMAN	FRED	

Last name	First name	Middle name/Initials
FREEMAN	WINIFRED	ANNE
FUCHS	JOSEF	
FULHAM	LAUREEN	JANET
FURNER	GUY	V
GAILLARD	JAMES	ROBERT
GALBRAITH	GEORGE	ALLEN
GALLUCCI	GLORIA	ALEXANDRA
GARROD	LAURENCE	DUNCAN
GASIOR	THOMAS	STEPHEN
GEE	THOMAS	WESLEY
GEHRING	ARNE	J
GEORGES	CHRISTINE	LAURE
GEORGES	MARI	ELIZABETH
GESSELL	ESTHER	ARLENE
GILBART (RIANN)	SHERYL (KAYLE)	A
GILGEN	CHRISTOPH	ANDREAS
GILGOFF	ROBERT	HARVEY
GIMPEL	ELISABETH	HERTA
GLASSMAN	WILLIAM	EDWARD
GNES	STEFANO	
GO	ANNABELLE	
GODDYN	JOAN	AMBER
GOLDENBERG	DVIR	
GOLDSHMIDT	MOR	
GORDON	HARRIET	MAY
GOTLIB	JANE	STACEY
GOULD	GIOVANNA	
GRAHAM	ROBERT	ROEBUCK
GREILSAMER	DANIEL	ALFRED
GRIES	NINA	FROSELL
GRIFFITH	DANIEL	HAYES
GROSS	DAVID	COLE
GUTIERREZ–MATURANA–LARIOS	BARBARA	
GYLLING	SOLVEIGQ	HELEN
HADLAND	LUELLA	MARTHA
HALL	SUSAN	ELIZABETH
HAMI	ASHRAF	
HAMI	MOHSEN	MARK
HAQ	TANZEEM	UL
HARA	AIKA	PALMY
HARLOW	KATHLEEN	PAMELA
HARPER	CAROLINE	ANNE
HARRISON	SAMUEL	LUCAS
HASEGAWA	MEGUMI	
HASEGAWA	YOSHIYUKI	
HEALY	DAVID	JOHN
HEALY	DOREEN	MARIE
HEBB	MARY	ELLEN
HEHLI	DEBORAH	JEANNE
HEIDE	THOMAS	POUL
HENDERSON	POLLY	
HENSON	ANTHONY	HOWARD
HERTZBERG	AVIRAM	
HICKS	BRIAN	TOHSEI
HIGGINS	WENSLEY	VIVIEN RUSSELL
HINNEBERG	JOANNA	CHRISTINA
HINNEBERG	PAUL	WALTER
HINNELL	SUZANNA	LYNN
HINTON	PAUL	DOUGLAS
HOFNER	MARIE	CLAUDE ELISE
HOLDEN	KAREN	LEE
HOLME	VICTORIA	ANNE
HONEYWELL	CALEY	FARYON
HORAN	AVSHALOM	
HORESH	NADAV	MEIR
HOYLE	JANICE	HUTTO
HOYLE	LISA	NICOLE
HUANG	HIS–ME	
HUANG	JANE	CHENGXIA
HUBBARD	TIMOTHY	KARL
HUBER	KRYSTYNA	M
HUME	ROSALIND	
HUNDT	LORNA	MAC LENNAN
HURDEN	JAMES	ALEXANDER GARNETT

Last name	First name	Middle name/Initials
HUSSAIN	TANVIR	MANZOOR
HUTCHINSON	THOMAS	KEMP
IBRAHIM	JAD	JIMMY
INKLEBARGER	JAMES	
INTROCASO	LORRAINE	A
JACKSON (NEE: WHEELER)	KATHRYN	HILARY
JAIN	ALK	RANI
JAMALI	QAIS	HAITHEM AL
JANSSEN	JAMES	R
JANSSEN	JODY	A
JOHAL	KRISTA	ELIZABETH MARR
JOHANSON	GARY	
JULES	GENEVIEVE	FRANCES
KAFKA	JEFFREY	STEWART
KAMMERZELL	ROBERT	LEE
KAMMERZELL	SHIRLEY	ANN
KANEKO	YASUKO	
KANKE	DOROTHY	LYNN
KAPALKA	ALISON	
KAPOS	MARTHA	ROCHLIN
KASPRZYK	CYNTHIA	BARBARA
KASSEL	MARK	AARON
KAWANO	ANDREA	KISHIYO
KELLER	ANDREAS	LUKAS
KELLEY	THOMAS	P
KEMP	ALISON	
KESSICK	ELIZABETH	ANNE
KHALAF	RICHARD	ANTHONY
KINGSTON	MATTHEW	WESLEY
KLEMM	CHRISTIAN	WALTER
KLINGLER	SUSAN	BARBARA
KOFMEHL	SAMANTHA	LISA
KOHLER	PATRICIA	ANN
KONG	STEPHANIE	SIRWIN
KONRAD	HANS	RUDOLF
KOPELMAN	ARIE	
KORDA	SCOTT	PIERRE
KRINSKY	DANIEL	B
KUMAR	NIRMALYA	
KUNDERT	ANN	
LAI	ERIC	CHUN CHOU
LAINE	ANGELA	STAUCH
LARSEN	GREGORY	GEORGE
LARSSON	CARL	KAI PING
LAUDER	ALBERT	JAMES
LAUENER	NATHAN	THEODOR
LAW	LEO	KAI CHING
LAWSON (NEE CRAWFORD)	COURTNEY	ANNE
LEACH	DAVID	REGINALD FRANCIS
LEE	JASON	J
LEHMAN	ANNA	MICHELLE
LEHMANN SCARPONI	PHAEDRA	MURIEL DIONA
LEONARD	PAUL	GEORGE
LEVETTO	MARCO	
LEVETTO	ROSSANA	
LEVIN	MALCOLM	ARNOLD
LEWIN	SUSAN	ELIZABETH SPENCER
LII	WINSTON	WEN
LIN	DAVID	GAU DE
LIN	SHERRY	SHIH PING
LINDGREN	STEVEN	RAY
LIU	TIANWEN	
LO	PATRICK	
LOEPPKY	SARAH	REBECCA
LONG	THOMAS	EDWARD
LOWEY	EILEEN	SLYPHER
LUCQUIAUD	AMY	INGRID SMALL
LUDERS	PILAR	MICHELLE
LUGINBUEHL	KEVIN	
MACLEAN	ANNE	
MADIEDO–BENSLER	PATRICIA	
MAEZ, III	JOSEPH	FILBERTO
MAGERUS	GEORGE	ISIDORE
MARANGON	FRANCESCA	SARA

Last name	First name	Middle name/Initials
MARCAIDE	IKER	
MARCOVICH	PHILIPPE	JOEL
MARTIN (NEE: SMITH)	MONICA	HELEN
MATHISEN	CAROL	ANN
MAXWELL	GEORGE	DEWEY
MAYS	FIONA	CORALIE
MCCAIN	JAMES	SCOTT PATRICK
MCCREERY	HENRY	ANTHONY JAMES
MCDUFFIE	JAMES	DANIEL
MCHALE	ANTHONY	
MCINTOSH	RYOKO	
MCINTOSH	STUART	J
MEARS	JESSICA	DE WINDT
MEIER	HELENE	ELISABETH
MEINGAST	JUDITH	JEAN
MIDDLETON	EDWARD	JAMES
MILLS	PATRICIA	ROBERTA
MOERTL–HAFIZOVIC	DZENANA	
MOORE	REBECCA	S
MOORE	WILLIAM	D
MORAGODA	ASOKA	MILINDA
MORRIS	JULIE	GAIL
MORTENSON	WILLIAM	BENNETT
MOTTERSHEAD	GARY	GEORGE
MOULD (NEE KNYFF)	ANNE	MARIE
MROCZKOWSKI	JAN	ALEKSANDER
MUHLBAUER	GRACE	LUCIE
MURPHY	SEAN	MICHAEL COLIN
MUSSIO	SHARON	LEE
NADLER	TAL	
NEWMAN	DAVID	ISAAC
NG	ERICA	CLARISSE NOCOM
NG	LILYBETH	
NICHOLL	OLIVIA	MOYRA
NICHOLS	JOHNATHAN	BRADLEY
NIELSEN	JANICE	LYNN
NIKOLITSA–WINTER	CHRISTIANA	
NILAND	JUDITH	ANNE
NOVIKOV	KIRILL	ANATOLYEVICH
NUSSBAUM	NIRA	JO
OFEN	SARAH	
ORCHARD	RITA	MARIE
OREN	RUTH	
OREN	SHIRA	YAEL
O'ROURKE	DUNCAN	PATRICK
OSMOND	TANIA	LEE
O'TOOLE	PATRICK	FRANCIS
PAK	RICHARD	CHANG
PALMER	CATHERINE	MARY
PANDJI	KRISTIJANTO	
PARRENT	LISA	RUTH
PATEL	MANISH	
PATTNI	MEENESH	
PAYKOU	ALEXANDRA	CECILY
PEEBLES	BRIAN	DAVID
PERRY	LAUREN	CELIDA
PETERLIN–NEUMAIER	TATJANA	M
PINSENT (AKA LEAH KING CAPELLUPO)	LEAH	
PLANTE	MICHEL	
POLAK	NICKOLAS	MAURITZ JOSEPH
POLIN	GIOVANNI	MOSE
PORTER	JAMES	DANIEL
PURDON	CAROLINE	ANNE
QUMBAR	ANOOD	MUHAMMAD
RABACCHI	GRACE	LISA
RADOJA	CHRISTINE	
RAJWITSCHER	NICHOLE	
RAMSINGHANI	AMIT	VASHU
RANA	BRINDA	
RANA	VIKAS	
RATHIER	STEPHANIE	KATIA
RAZ	ORIT	
REICHLIN	KATHLEEN	N
REICHLIN	KATHLEEN	NATASHA

Last name	First name	Middle name/Initials
REID	KATHERINE	AMELIA
REID	WILLIAM	CABANNE CABOT
REUTEMANN	CHRISTINA	BRIGITTE
RICHARDSON	SUSAN	ELAINE
RICHTER	DEBORAH	CLAIRE
RIEDER	NICOLE	LISA
RIESER–BAKER	FRANCESCA	ELIZABETH
RIGGS	CHRISTINA	JOY
RIKER	ROBERT	RAY
ROAN	AHMED	JASON
ROBERGE	INDRE	
ROBINSON	GARY	CAMPBELL
RODRIGUEZ	JAVIER	DAVID
ROMIG	THOMAS	
RONGA	ALEXANDRE	JACQUES OLIVER
RONNHOLM	THOMAS	
ROOKE	JACQUELINE	MARIE
ROSENTHAL	MONIKA	
ROTHENBERG	LINDA	ELISABETH
RUBNER	JOSEPH	
RUCKMAN	MARIBETH	RUTH
RUNDBERG COSULICH	BERIT	CHARLOTTE
RUSSELL	GERARD	S
RYMON	GAL	
RYMON	RON	
RYMON	TALIA	
SADAR	MARIANNE	DOROTHY
SALMI	SANDRA	MAE
SALTARELLI	FRANCESCA	
SAMHOUN	MARWA	N
SANDERS	JENNIFER	ANN
SCARROW (NEE: NUGENT)	ASHLEY	LORING
SCHAD	KELLY	ANN
SCHAFFNER	SANDRA	MICHELLE
SCHAUBLIN	ADRIAN	LUKAS
SCHELKER	SIMONE	DOMINIQUE
SCHEPP	LEAH	ASHLEY
SCHULER	CATHERINE	T
SCHURMANN DENZLER	URSINA	META
SEGRE	CLAUDE	GEORGE
SEGRE VITALI	WANDA	JACQUELINE
SHAFFER	ELEONORE	BROOKE
SHAH	SHAILA	JAY
SHAHAR	ELAD	
SHEIKH	ZAFAR	IKRAM
SHIELDS	JOHN	
SHILD	DANA	
SHORT	JEFFREY	WILLIAM
SHULL	JEFFREY	LOUISE
SILBERMAND	IAAC	
SKIDMORE	GRETCHEN	LONG
SKIREDJ	LAMIA	MIRIAM
SMALL	JOHN	MURRAY
SMITH	BERNHARD	
SOLMS–BARUTH	LIVIA	D. M. ZU
SOMEYA	MASATO	
SPEERS	JOAN	ADAMS
SPENCER	DAVID	HONATHAN
SPINGLER	MARKUS	STEVEN
SPURLING	ANNA	L
STEENBURGH	FLOYD	F
STEFKA	DANIEL	GUIDO
STEINHAGEN	VIOLA.	
STEINRUECKE	KATHARINA	ELISABETH H
STEWART	FREDERICK	
STOLZE	JAN	
STUKATOR	REINHOLD	
SULTAN	MANSOOR	ABDULKARIM
SUNNEGARDH	LEIF	RIKARD
SURCHTNER	JOSEFINE	SIEGLINDE
SWEET	CONSTANCE	MARIE
TAIT	AMANDA	
TAPLEY	HEATHER	LYNNE
TAQUI	AHMED	A

Last name	First name	Middle name/Initials
TARRANT	LINDA	
TAYLOR	HILLARY	JEANNE
THALER	HEMMA	ELISABETH
THORNING	CASPER	
THORNTON	TRASZHA	
THORNTON	TRASZHA	ROXANNE
THRENDYLE	THERESA	ANN
TIEU	KEVIIN	
TODD	JULIAN	GARFIELD
TONKYN	ANNE	PRUDENCE
TONKYN	WILLIAM	RICHARD
TRACOL	MIREILLE	LAKAH
TRELIVING	JAMES	WALTER
TSUJI	KATHERINE	EMIKO
TUCK, III	ROSCOE	EDWARD
TUOHY	WALTER	JOSEPH
TUTTNAURER	GAL	ZEV
UTIGER	MARY	J
VALENTI	SHIRLEY	JEAN
VAN CAMPEN	JOANNES	HENDRICUS
VANDERBERG	MARGARET	L.
VERRALL	MARK	HARDY
VLITOS	JOHN	PAUL
VOGEL	VICTOR	DAVID
VOLIJ	OSCAR	CARLOS
WACASEY	JENNIFER	LEE
WACHTMAN, JR	EDWARD	LEROY
WAESPE	NILS	
WALKER–SMITH	PETER	JAMES
WALLACE	MAXWELL	SHEPPARD BAILEY
WANG	JWUO	CHIN
WATSON	CLYNTHIA	KAYE
WEARS	TERRY	ALAN
WEATHERLEY	CALLUM	JAMES RYAN
WEBER	MIRKO	JASON
WEBER–MARSH	NADINE	NICOLE
WEE	HYUN	JU
WEEKS	CLAIRE	
WEINBERG	LINDA	FRANCES
WELLS	KAIRIT	
WEST	ROBERT	EUGENE
WESTCOTT	LEWIS	MICHAEL
WESTMAN	STEVEN	ANTHONY
WHALEY	ANN	MARIE
WHITWORTH	CLAUDIA	MARIA
WIHITLOCK	KATHERINE	MARY JOYCE
WILLLIAMS	ADAIR	GEORGE WILMOT
WINGFIELD	ANNA	
WOLBERGER	ILAN	
WONG	KARLY	KA–LAI
WOOD	RONALD	KEITH
WORTHING	MARY	EVELYN LORRAINE
WROBEL	VICTOR	
WU	JERRY	KUAN–HAN
WU	JOSEPH	I–CHIEH
YADA	TERESA	ANN
YANG	YUNG–FA	
YATES	MEGAN	ROE
YOUNG	ERIC	CARL
ZABEL	SUSAN	PATRICIA
ZAKLAD	EFRAT	
ZAKLAD	HAIM	
ZANESCO	PAUL	B
ZANGL	WYONIE	FRANZISKA
ZELEWICZ	LLENE	JUNE
ZONA	ELENA	MARIA
ZYNGIER	SHEILA	WOWE

Dated: July 22, 2016.

Maureen Manieri,

Manager Classification Team 82413, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. 2016–18029 Filed 7–28–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Disability Compensation (Committee) will meet on September 12–13, 2016. The Committee will meet at 1800 G Street NW., 5th Floor, Conference Room 542, Washington, DC 20006. The sessions will begin at 8:30 a.m. and end at 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Dr. Ioulia Vvedenskaya, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Policy Staff (211C), 810 Vermont Avenue NW., Washington, DC 20420 or email at *Ioulia.Vvedenskaya@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Due to an increase in security protocols, and in order to prevent delays in clearance processing, you should allow an additional 30 minutes before the meeting begins. Routine escort will be provided until 9:00 a.m. each day. Any member of the public wishing to attend the meeting or seeking additional information should email Dr. Vvedenskaya or call her at (202) 461–9882.

Dated: July 26, 2016.

Jelessa M. Burney,

Federal Advisory Committee Mangement Officer.

[FR Doc. 2016–17985 Filed 7–28–16; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Friday,
No. 146 July 29, 2016

Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 130, 171, 173, et al.
Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 130, 171, 173, and 174

[Docket No. PHMSA–2014–0105 (HM–251B)]

RIN 2137–AF08

Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA, in consultation with the Federal Railroad Administration, is issuing this NPRM to propose revisions to regulations that would expand the applicability of comprehensive oil spill response plans (OSRPs) based on thresholds of liquid petroleum oil that apply to an entire train consist. Specifically, we are proposing to expand the applicability for comprehensive OSRPs so that any railroad that transports a single train carrying 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist must also have a current comprehensive written OSRP. We are further proposing to revise the format and clarify the requirements of a comprehensive OSRP (*e.g.*, requiring that covered railroads develop response zones describing resources available to arrive onsite to a worst-case discharge, or the substantial threat of one, which are located within 12 hours of each point along the route used by trains subject to the comprehensive OSRP). We also solicit comment on defining high volume areas and staging resources using alternative response times, including shorter response times for spills that could affect such high volume areas. Further, in accordance with the Fixing America's Surface Transportation Act of 2015, this action proposes to require railroads to share information about high-hazard flammable train operations with state and tribal emergency response commissions to improve community preparedness and seeks comments on these proposals. Lastly, PHMSA is proposing to incorporate by reference an initial boiling point test for flammable liquids from the ASTM D7900 method referenced in the American National Standards Institute/American Petroleum Institute Recommend Practices 3000, "Classifying and Loading of Crude Oil into Rail Tank Cars," First Edition, September 2014 as an acceptable testing alternative to the boiling point tests currently specified in the HMR. PHMSA believes providing this additional boiling test option provides regulatory flexibility and promotes enhanced safety in transport through accurate packing group assignment.

DATES: Comments must be received by September 27, 2016. We are proposing a mandatory compliance date of 60 days after the date of publication of a final rule in the **Federal Register**. In this NPRM, we solicit comments from interested persons regarding the feasibility of the proposed compliance date.

ADDRESSES: You may submit comments identified by the docket number, PHMSA–2014–0105 (HM–251B), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office located at U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comment from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *http://www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, which is accessible through *www.dot.gov/privacy.* To facilitate comments tracking and response, we encourage commenters to provide their name or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely filed comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

FOR FURTHER INFORMATION CONTACT: Victoria Lehman, (202) 366–8553, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001; or Karl Alexy, (202) 493–6245, Office of Safety Assurance and Compliance, Federal Railroad Administration.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms

AAR	Association of American Railroads
ACP	Area Contingency Plan
ANPRM	Advance Notice of Proposed Rulemaking
ANSI	American National Standards Institute
API	American Petroleum Institute
ASTM	American Society for Testing and Materials
BSEE	Bureau of Safety and Environmental Enforcement
CDT	Central Daylight Time
CFR	Code of Federal Regulations
Crude Oil	Petroleum crude oil
CST	Central Standard Time
CWA	Clean Water Act (See Federal Water Pollution Control Act)
DHS	Department of Homeland Security
DOE	Department of Energy
DOI	Department of the Interior
DOT	Department of Transportation
EDT	Eastern Daylight Time
E.O.	Executive Order
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
ESA	Environmentally Sensitive/Significant Area (See Endangered Species Act)
EST	Eastern Standard Time
FAST	Fixing America's Surface Transportation Act
FEMA	Federal Emergency Management Agency
FMCSA	Federal Motor Carrier Safety Administration
FR	Federal Register
FRA	Federal Railroad Administration
FWPCA	Federal Water Pollution Control Act (See Clean Water Act)
HHFT	High Hazard Flammable Train
HMR	Hazardous Materials Regulations (See 49 CFR parts 171–180)
HMT	Hazardous Materials Table (See 49 CFR 172.101)
IBP	Initial Boiling Point

ICP Integrated Contingency Plan
LEPC Local Emergency Planning Committee
MDT Mountain Daylight Time
NASTTPO National Association of SARA Title III Program Officials
NCP National Contingency Plan
NIMS National Incident Management System
NPRM Notice of Proposed Rulemaking
NTSB National Transportation Safety Board
OMB Office of Management and Budget
OPA 90 Oil Pollution Act of 1990
OSC On-Scene Coordinator
OSRP Oil Spill Response Plan
PG Packing Group
PHMSA Pipeline and Hazardous Materials Safety Administration
PREP National Preparedness for Response Exercise Program
RCP Regional Contingency Plan
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RP Recommended Practice
RSPA Research and Special Programs Administration
SERC State Emergency Response Commission
TERC Tribal Emergency Response Commission
TRANSCAER Transportation Community Awareness and Emergency Response
TSA Transportation Security Administration
TTCI Transportation Technology Center Inc.
U.S.C. United States Code
USCG United States Coast Guard
USFA United States Fire Administration

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IX. List of Subjects

I. Executive Summary

The Pipeline and Hazardous Materials Safety Administration (PHMSA), in coordination with the Federal Railroad Administration (FRA), is issuing this notice of proposed rulemaking (NPRM), titled "Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains," in order to improve oil spill response readiness and mitigate effects of rail incidents involving petroleum oil and certain high-hazard flammable trains (defined in 49 CFR 171.8). This NPRM is necessary due to the expansion in the United States' (U.S.) energy production, which has led to significant challenges for the country's transportation system. PHMSA published an advanced notice of proposed rulemaking (ANPRM) on August 1, 2014 (79 FR 45079), under the title, "Oil Spill Response Plans for High-Hazard Flammable Trains." This proposed rule addresses comments to the ANPRM and proposes to modernize the comprehensive oil spill response plan ("comprehensive plan") requirements under 49 CFR part 130 for petroleum oils. Additionally, consistent with the Emergency Order issued by the Secretary of Transportation (Secretary) on May 7, 2014, this NPRM proposes to require railroads to share information with state and tribal emergency response commissions (*i.e.*, SERCs and TERCs) to improve community preparedness for potential high-hazard flammable train accidents. Lastly, PHMSA is proposing to incorporate by reference the ASTM D7900 test method referenced by the American National Standards Institute/American Petroleum Institute Recommend Practices 3000, "Classifying and Loading of Crude Oil into Rail Tank Cars," First Edition, September 2014 related to initial boiling point for flammable liquids as an acceptable testing alternative to the boiling point tests specified in the current regulations. PHMSA believes the incorporation of this ASTM methodology into regulation provides regulatory flexibility and promotes enhanced safety in transport through accurate packing group (PG) assignment.

The proposals in this NPRM work in conjunction with the requirements adopted in the final rule HM–251, "Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains" (80 FR 26643; May 8, 2015) ("HHFT Final Rule"). The Department of Transportation (DOT) continues its comprehensive approach to ensure the safe transportation of energy products.

PHMSA discusses the proposed requirements further throughout this NPRM and seeks comments on the questions in the sections, as well as on all aspects of this proposal and its supporting analysis. PHMSA consolidates questions related to the proposed requirements for oil spill response plans in Section II, Subsection C ("Summary of Proposed Oil Spill Response Plan Requirements)" of this rulemaking. PHMSA consolidates the questions related to information sharing in Section VII ("Section-by-Section Review") under the discussion of § 174.312. PHMSA is also soliciting public comment on specific issues regarding our analysis and has consolidated these questions in Section 4 of the draft Regulatory Impact Analysis (RIA).

Expansion in domestic oil production relative to the 2000s has resulted in a large volume of crude oil being transported to refineries and other transport-related facilities throughout the country.[1] With the expectation of continued domestic production, rail transportation remains a flexible alternative to transportation by pipelines or vessels, which have historically delivered the vast majority of crude oil to U.S. refineries. The volume of crude oil carried by rail increased 423 percent between 2011 and 2012.[2] [3] In 2013, the number of rail carloads of crude oil approached 400,000, reached approximately 450,000 carloads in 2014, and fell to approximately 390,000 carloads in

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[1] See Memorandum of Understanding (MOU) between the Secretary of Transportation and the Administrator of the Environmental Protection Agency (EPA) establishing jurisdictional guidelines for implementing § 1321(j)(1)(C). 36 FR 24080; reprinted at 40 CFR part 112 App. A (December 18, 1971).

[2] See U.S. Rail Transportation of Crude Oil: Background and Issues for Congress; *http://fas.org/sgp/crs/misc/R43390.pdf*.

[3] See also "Refinery receipts of crude oil by rail, truck, and barge continue to increase" *http://www.eia.gov/todayinenergy/detail.cfm?id=12131*.

2015.[4] Because rail transportation commonly includes petroleum oil shipped in high volumes and large quantities, either as several cars of material along with other commodities in a manifest train or as a single commodity train (commonly referred to as a "unit train"), there is a significant risk of train accidents that could reasonably be expected to cause substantial harm to the environment by discharging product into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.[5] As detailed in the Section III ("Recent Spill Events") of this rulemaking and the draft RIA, recent train accidents involving the discharge of petroleum oils have posed significant challenges for responders.

This rulemaking addresses issues related to preparedness and planning for the potential of train accidents involving the discharge of flammable liquid energy products. Specifically, this NPRM proposes to: (1) Expand the applicability of comprehensive oil spill response plans to include any single train transporting 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train transporting 35 or more loaded tank cars of liquid petroleum oil throughout the train consist; (2) clarify and add new requirements for comprehensive oil spill response plans; (3) require railroads to share information with state and tribal emergency response commissions (*i.e.*, SERCs and TERCs) for high-hazard flammable trains to improve community preparedness for potential accidents; and (4) provide an alternative test method for determining the initial boiling point of a flammable liquid. The proposals in this rulemaking are shaped by public comments, National Transportation Safety Board (NTSB) Safety Recommendations, analysis of recent accidents, and input from stakeholder outreach efforts (including first responders). The estimated costs and benefits are described in Table 1 below:

TABLE 1—10 YEAR AND ANNUALIZED COSTS AND BENEFITS BY STAND-ALONE REGULATORY PROPOSAL

Provision	Benefits (7%)		Costs (7%)
	Qualitative	Breakeven	
Oil Spill Response Planning and Response	• Improved Communication/ Defined Command Structure may improve response. • Pre-identified Access to Equipment and Staging of Appropriate Equipment for Response Zones. • Trained Responders.	Cost-effective if this requirement reduces the consequences of oil spills by 4.1%.	10-Year: $18,051,343. Annualized: $2,570,105.
Information Sharing	• Improved Communication. • Enhanced Preparedness.	Cost-effective if this requirement reduces the consequences of oil spills by 0.8%.	10-Year: $3,650,832. Annualized: $519,796.
IBR of ASTM D7900	• Regulatory Flexibility. • Enhanced Accuracy in Packing Group Assignments.		No Cost Estimated.
Total		Cost-effective if this requirement reduces the consequences of oil spills by 4.9%.	10-Year: $21,702,175 Annualized: $3,089,901.

A. Oil Spill Response Plans

The Oil Pollution Act of 1990 amended the Federal Water Pollution Control Act (FWPCA), also known as the Clean Water Act (CWA) at 33 U.S.C. 1321, by adding oil spill response planning requirements for "facilities" that handle oil. The CWA requires that owners and operators of onshore facilities prepare and submit oil spill response plans for facilities that "could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone."[6] The CWA applies to railroads or "rolling stock," which is included in the definition of "onshore facility."[7]

The Department of Transportation's oil spill planning requirements for rolling stock and motor carriers are found at 49 CFR part 130. Part 130 currently requires "comprehensive written plans" that comply with the CWA for the transportation of oil in a quantity greater than 1,000 barrels or 42,000 gallons per package. The approximate capacity of a rail car carrying crude oil is 30,000 gallons. Therefore, part 130 does not currently require that railroads prepare comprehensive written plans. Part 130 also includes preparation of "basic plans" for containers with a capacity of 3,500 gallons or more carrying petroleum oil. Therefore, basic oil spill response plans are currently required for most, if not all, tank car shipments of petroleum oil. This rulemaking does not propose changes to the basic plan requirements because there is no justification for such changes at this time.

On January 23, 2014, the NTSB issued Safety Recommendation R–14–05, recommending that PHMSA revise the oil spill response planning thresholds for comprehensive oil spill response plans.[8] The NTSB also issued Safety Recommendation R–14–02, recommending that FRA audit spill response plans.[9] These recommendations are further discussed in Section IV ("National Transportation Safety Board Safety Recommendation") of this rulemaking. On August 1, 2014, PHMSA, in consultation with FRA, issued an ANPRM (79 FR 45079; HM–251B) seeking comment on potential revisions to its regulations that would expand the applicability of comprehensive oil spill response plans (OSRPs) to high-hazard flammable trains (HHFTs), based on thresholds of crude oil that apply to an entire train consist.[10] The proposed changes in this rulemaking clarify the comprehensive plan requirements to address the risk posed by HHFTs carrying petroleum oils.

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[4] *http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=ESM_EPC0_RAIL_NUS-NUS_MBBL&f=M.*

[5] See 33 U.S.C. 1321(j)(5)(C) and Section I. Statutory/Legal Authority for this Rulemaking of this document.

[6] 33 U.S.C. 1321(j)(5)(C).

[7] "Onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land." 33 U.S.C. 1321(a)(10). "Rolling stock" refers to rail cars.

[8] *http://www.phmsa.dot.gov/PHMSA/Key_Audiences/Hazmat_Safety_Community/Regulations/NTSB_Safety_Recommendations/Rail/ci.R-14-5,Hazmat.print.*

[9] *http://www.ntsb.gov/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=R-14-002.*

This rulemaking addresses the risk of increased shipments of large quantities of petroleum oil being transported by rail and proposes to modernize and clarify the requirements for comprehensive OSRPs and more closely align these requirements with the statutory requirements of the CWA. This rulemaking proposes to expand the applicability for comprehensive OSRPs to railroads transporting a single train containing 20 or more tank cars loaded with liquid petroleum oil in a continuous block, or a single train containing 35 or more tanks cars loaded with liquid petroleum oil throughout the train consist. This quantity aligns with the definition of a high-hazard flammable train in the HHFT Final Rule, which added new requirements and operational controls for these trains. The proposed changes respond to commenter requests for more specificity in plan requirements; provide a better parallel to other federal oil spill response plan regulations promulgated under the CWA; address the needs identified by first responders in the "Crude Oil Rail Emergency Response Lessons Learned Roundtable Report"; and provide requirements to address the challenges identified through an analysis of recent spill events.[11] The changes also propose to leverage the geographic information provided through the expanded routing analysis requirements of the HHFT Final Rule by applying a geographic component to the response plan structure. Railroads would divide their routes into "response zones" and connect notification procedures and available response resources to the specific geographic route segments that comprise the response zones. The proposed changes clarify the railroad's role in response activities and the communication procedures needed to notify Federal, State, and local agencies. A summary of the Clean Water Act statutory language, the current regulations of 49 CFR part 130, and the proposed changes to the comprehensive plan requirements under this rulemaking are further described in Section II, Subsection C ("Summary of Proposed Oil Spill Response Requirements").

B. Information Sharing

Federal hazardous materials transportation law (49 U.S.C. 5101–5128) authorizes the Secretary to "prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce." The Secretary delegated this authority to PHMSA under 49 CFR 1.97(b). As such, PHMSA is responsible for overseeing a hazardous materials safety program that minimizes the risks to life and property inherent in transportation in commerce. The HMR include operational requirements applicable to each mode of transportation. On a yearly basis, the HMR provide safety and security requirements for the transportation of more than 2.5 billion tons of hazardous materials (hazmat), valued at about $2.3 trillion, over 307 billion miles on the nation's interconnected transportation network.[12]

The Secretary also has authority over all areas of railroad transportation safety (Federal railroad safety laws, principally 49 U.S.C. chapters 201–213); this authority is delegated to FRA under 49 CFR 1.89. Pursuant to its statutory authority, FRA promulgates and enforces a comprehensive regulatory program (49 CFR parts 200–244) and the agency inspects and audits railroads, tank car facilities, and hazardous material offerors for compliance with both FRA's regulations and the HMR. FRA also has an extensive, well-established research and development program to improve all areas of railroad safety, including hazardous materials transportation. As a result of the shared role in the safe and secure transportation of hazardous materials by rail, PHMSA and FRA work closely when considering regulatory changes, and the agencies take a system-wide, comprehensive approach consistent with the risks posed by the bulk transport of hazardous materials by rail.

On May 7, 2014, DOT issued an Emergency Restriction/Prohibition Order in Docket No. DOT–OST–2014–0067 (Order).[13] That Order required each railroad transporting in commerce within the U.S. 1,000,000 gallons or more of Bakken crude oil in a single train to provide certain information in writing to the SERC for each state in which it operates such a train. Subsequently, in August of 2014, PHMSA published an NPRM proposing to codify and clarify the requirements of the Order in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) and requested public comment on the various facets of that proposal. *See* 79 FR 45015 (Aug. 1, 2014) (HHFT NPRM). In the final rule of that proceeding, however, PHMSA did not adopt the notification requirements proposed in the NPRM. *See* 80 FR 26643 (May 8, 2015) (HHFT Final Rule). PHMSA determined the expansion of the existing route analysis and consultation requirements under § 172.820 of the HMR to include HHFTs would be the best approach to ensuring that emergency responders and others involved with emergency response planning and preparedness would have access to sufficient information regarding crude oil shipments moving through their jurisdictions. PHMSA reasoned that expanding the existing route analysis and consultation requirements of § 172.820 (which already apply to the rail transportation of certain hazardous materials historically considered to be highly hazardous) would preserve the intent of the Emergency Order to enhance information sharing with emergency responders and allow for the easy incorporation of HHFTs into the overall hazardous materials routing and information sharing scheme.

On December 4, 2015, President Obama signed into law the Fixing America's Surface Transportation Act of 2015 ("FAST Act"). The FAST Act includes the "Hazardous Materials Transportation Safety Improvement Act of 2015" at §§ 7001 through 7311, which provides direction for PHMSA's hazardous materials safety program. Section 7302 directs the Secretary to issue regulations that require real-time sharing of electronic train consist information for hazardous materials shipments and require Class I railroads to provide State Emergency Response Commissions (SERCs) advanced notification of HHFTs traveling through their respective jurisdictions. DOT will implement the requirements related to electronic train consists in a separate rulemaking, but is addressing the requirement for advanced notification of HHFTs to SERCs in this rule. Section 7302 requires Class I railroads to provide advanced notification and information on HHFTs to SERCs consistent with the notification requirements in the Secretary's May 2014 Emergency Order in docket number DOT–OST–2014–0067. Section 7302 further requires SERCs receiving this advanced notification to provide the information to law enforcement and emergency response agencies upon request and directs the Secretary to establish security and confidentiality protections for the electronic train consist information and advanced notification information required by § 7302. In response to the FAST Act and the public's interest and feedback the Department previously received related to its May 7, 2014, Emergency Order,[14] this NPRM proposes to add a new § 174.312 to the HMR. This new section will establish the information sharing requirements, related to Emergency Order DOT–OST–2014–0067. As directed by the FAST Act, the proposed information requirements in § 174.312 are generally consistent with the Order, but broaden the scope of trains covered by the requirement. Consistent with the FAST Act, the proposed regulation expands the notification requirement to apply to all HHFTs as defined in the HHFT Final Rule, not just trains transporting 1,000,000 or more gallons of Bakken crude oil, and requires railroads to provide the notification monthly. Also, § 174.312 would require railroads to provide the required information to both SERCs and Tribal Emergency Response Commissions (TERCs), or other appropriate state designated agencies. Finally, under proposed § 174.312, a railroad operating a train subject to the Comprehensive Oil Spill Response Plan requirements of this proposed rule would also need to provide the relevant SERCs, TERCs, or other appropriate state agencies with the contact information for qualified individuals and the description of response zones required to be compiled under proposed 49 CFR part 130.

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[10] For the purposes of this discussion, train consist is considered the rolling stock, exclusive of the locomotive, making up a train.

[11] *http://www.phmsa.dot.gov/hazmat/osd/emergencyresponse.*

[12] 2012 Commodity Flow Survey, Research and Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS). See *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=CFS_2012_00H01&prodType=table.*

[13] *http://www.dot.gov/briefing-room/emergency-order.*

Table 2 below describes, generally, how this proposed rule would address routing and information sharing issues, as compared to the Order (which remains in effect), the regulatory provisions implemented by the HHFT final rule, and the provisions of the FAST Act. PHMSA discusses the information sharing proposals further in the section-by-section analysis for § 174.312 later in this document and solicits comment on the questions listed there, as well as all aspects of this proposal.

TABLE 2—INFORMATION SHARING FOR EMERGENCY RESPONDERS

Category	Emergency order and HHFT NPRM	HHFT final rule (routing)	FAST Act (advanced notification)	OSRP NPRM (information sharing)
Who is subject?	All railroads transporting 1,000,000 gallons or more of Bakken crude oil in a single train.	All railroads transporting HHFT (20 cars in a block, 35 in consist carrying ANY Class 3 flammable liquid).	Class I railroads transporting HHFT (20 cars in a block, 35 in consist carrying ANY Class 3 flammable liquid).	All railroads transporting HHFT (20 cars in a block, 35 in consist carrying ANY Class 3 flammable liquid).
Who must the railroads notify?	Railroads notify SERCs or other appropriate state-designated entities. Provide the notification to FRA upon request.	Railroads provide point of contact (POC) information to state and/or regional fusion centers and state, local, and tribal officials in jurisdictions that may be affected by a rail carrier's routing decisions and who directly contact the railroad to discuss routing decisions.	Railroads must notify SERCs who share information with other state and local public agencies upon request, as appropriate.	Railroads must notify SERCs, TERCs. or other appropriate state designated entities who share information with other state and local public agencies upon request, as appropriate. Railroads provide the notification to DOT upon request.
What type of notification?	*Active*—Information must continuously be supplied to these entities.	*Passive*—Information on routing and risk analysis will be discussed upon request with state, local, and tribal officials in jurisdictions that may be affected by a rail carrier's routing decisions.	Active—Information must continuously be supplied to these entities.	*Active*—Propose the active information sharing requirements in the Order with certain changes described below.
When/how often?	Update notifications when Bakken crude oil traffic materially changes within a particular county or state (by 25% or more).	Routing and risk analysis is performed annually.	Update the notifications prior to making any material changes to any volumes or frequencies of HHFTs traveling through a county.	Monthly notification or certification of no change to ensure that changes to frequency or volume are clearly communicated.

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[14] A discussion regarding public interest and feedback can be found later in the preamble in the section on "HHFT Rulemaking and Response."

TABLE 2—INFORMATION SHARING FOR EMERGENCY RESPONDERS—Continued

Category	Emergency order and HHFT NPRM	HHFT final rule (routing)	FAST Act (advanced notification)	OSRP NPRM (information sharing)
What to include in the notification?	A reasonable estimate of the number of affected trains that are expected to travel, per week, through each county within the state.	Information on results of routing and risk analysis can be discussed upon request. This includes the volume of hazardous material transported, rail traffic density, trip length, and route among other factors.	A reasonable estimate of the number of implicated trains that are expected to travel, per week, through each county within the applicable state.	A reasonable estimate of the number of HHFTs that are expected to travel, per week, through each county within the state.
	The routes over which the affected trains will be transported.	Information on results of routing and risk analysis can be discussed upon request. This includes routes over which affected trains are transported.	Identification of the routes over which such liquid will be transported.	The routes over which the affected trains will be transported.
	A description of the petroleum crude oil and applicable emergency response information required by subparts C and G of part 172 of this subchapter.	Compile under current requirements in subparts C and G of part 172.	Identification and a description of the Class 3 flammable liquid being transported on such trains and applicable emergency response information, as required by regulation.	A description of the materials shipped and applicable emergency response information required by subparts C and G of part 172 of this subchapter.
	At least one point of contact at the railroad (including name, title, phone number and address) responsible for serving as the point of contact for the State Emergency Response Commission and relevant emergency responders related to the railroad's transportation of affected trains.	A point of contact (including the name, title, phone number and e-mail address) who can provide fusion centers and consult with other State, local and tribal officials (may include SERCs/TERCs) about the results of the routing and risk analysis (includes information on 27 factors) upon request.	A point of contact at the Class I railroad responsible for serving as the point of contact for State emergency response centers and local emergency responders related to the Class I railroad's transportation of such liquid.	At least one point of contact at the railroad (including name, title, phone number and address) for the SERC, TERC, and relevant emergency responders related to the railroad's transportation of affected trains.
Spill Response Plan Info	N/A	N/A	N/A	For petroleum oil trains subject to Comprehensive Oil Spill Response Plan, the contact info for the qualified individuals and description of response zones compiled under part 130 must also be included.

C. Initial Boiling Point Test

An offeror's responsibility to accurately classify and describe a hazardous material is a key requirement under the HMR. In accordance with § 173.22 of the HMR, it is the offeror's responsibility to properly "class and describe a hazardous material in accordance with parts 172 and 173 of the HMR." For transportation purposes, classification is ensuring the proper hazard class, packing group, and shipping name are assigned to a particular material. For a Class 3 flammable liquid, the HMR provide two tests to determine classification. Both the flash point and initial boiling point (IBP) must be conducted to properly classify and assign an appropriate packing group (PG) for a Class 3 Flammable liquid with certain changes described below, in accordance with §§ 173.120 and 173.121.

In 2014, the rail and oil industry, with PHMSA's input, developed a recommended practice (RP) designed to improve crude oil rail safety through proper classification and loading practices. This effort was led by API and resulted in the development of an American National Standards Institute (ANSI) recognized recommended practice (see ANSI/API RP 3000, "Classifying and Loading of Crude Oil into Rail Tank Cars"). The API RP 3000 provides guidance on the material characterization, transport classification, and quantity measurement for overfill prevention of petroleum crude oil for the loading of rail tank cars. With regard to classification, this recommended practice concluded that for crude oils containing volatile, low molecular weight components (*e.g.* methane), the recommended best practice is to test using American Society for Testing and Materials (ASTM) D7900.

The IBP test and practice recommended by industry (ASTM D7900) is not currently aligned with the testing requirements authorized in the HMR, forcing shippers to continue to use the testing methods authorized in § 173.121(a)(2). The ASTM D7900 differs from the boiling point tests currently in the HMR, because it is the only test which ensures a minimal loss of light ends. Therefore, for initial boiling point determination, PHMSA is proposing to incorporate by reference the ASTM D7900 test method identified within API RP 3000, thus permitting the industry best practice for testing Class 3 PG assignments. We note that the incorporation of the ASTM D7900, which aligns with the API RP 3000, will not replace the currently authorized initial boiling point testing methods, but rather serve as a testing alternative if one chooses to use that method. PHMSA believes this provides flexibility and promotes enhanced safety in transport through accurate packing group assignment.

II. Background

A. Current Oil Spill Response Requirements

The Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (OPA 90), directs the President, at § 1321(j)(1)(C),[15] to issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges." The CWA directs the President to issue regulations requiring owners and operators of certain vessels and onshore and offshore facilities to develop, submit, update and in some cases obtain approval of Oil Spill Response Plans (OSRPs).

Under 33 U.S.C. 1321(j)(5), an "owner or operator" of "[a]n onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, . . ." must "prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst-case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance." Under 33 U.S.C. 1321(j)(5)(D), if a response plan is required then it must have specific elements, including submission and review.

On October 22, 1991, the President delegated to the Secretary authority to regulate certain transportation-related facilities (*i.e.*, motor carriers and railroads) under § 1321(j)(1)(C) and 1321(j)(5). See Executive Order 12777, 56 FR 54757, sections 2(b)(2), 2(d)(2). The Secretary later delegated his authority to regulate certain transportation-related facilities (*i.e.*, motor carriers and railroads) to PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA). PHMSA's delegated authority under § 1321(j)(1)(C) and 1321(j)(5) for certain transportation-related facilities (*i.e.*, motor vehicles and rolling stock) is solely the authority to promulgate regulations. The Federal Highway Administration and the FRA have the authority for OSRP review and approval for motor carriers and railroads, respectively.

The terms "transportation related facility" and "nontransportation related facility" are defined in a December 18, 1971, Memorandum of Understanding (MOU) between the Department and the U.S. Environmental Protection Agency (EPA) establishing jurisdictional guidelines for implementing § 1321(j)(1)(C). 36 FR 24080; reprinted at 40 CFR part 112, appendix A. "Transportation related facilities" include: Highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto . . . . Excluded are highway vehicles and railroad cars and motive power used exclusively within the confines of a non transportation related facility or terminal facility and which are not intended for use in interstate or intrastate commerce.[16]

On June 17, 1996, RSPA published a final rule at 49 CFR part 130 to carry out PHMSA's delegated authority under the CWA for motor carriers and railroads (61 FR 30533). This rule adopted general spill response planning and response plan implementation requirements intended to prevent and contain spills of oil during transportation. Requirements for the "scope" of the regulations were included in § 130.2. Section 130.2(b) clarifies that the requirements of part 130 have no effect on "the discharge notification requirements of the United States Coast Guard (33 CFR part 153) and EPA (40 CFR part 110)."

Part 130 requires a basic OSRP for oil shipments in a packaging having a capacity of 3,500 gallons or more, which requires the preparation of a written plan that (1) "sets forth the manner of response to discharges . . ." (2) "takes into account the maximum potential discharge of the contents from the packaging," (3) "identifies private personnel and equipment available to respond to a discharge," and (4) "identifies the appropriate persons and agencies (including their telephone numbers) to be contacted in regard to such a discharge and its handling, including the National Response Center." The requirements for a basic response plan were issued as a "containment rule pursuant to § 1321(j)(1)(C)" of the CWA.[17]

The regulations at 49 CFR part 130 prohibit a person from transporting oil in a package containing more than 42,000 gallons (1,000 barrels) unless that person has a current comprehensive OSRP that: (1) Conforms to all requirements for a basic OSRP, (2) is consistent with the National Contingency Plan and Area Contingency Plans, (3) identifies the qualified individual with authority to implement removal and facilitate communication between federal officials and spill response personnel, (4) identifies and ensures by contract or other means response equipment and personnel to remove a worst-case discharge, (5) describes training, equipment testing, and drills, and (6) is submitted to FRA. The regulations also require motor carriers to submit plans to FHWA. However, motor carriers do not have packages capable of meeting the threshold for a comprehensive plan. The comprehensive OSRP addresses minimum requirements for a plan specified by 33 U.S.C. 1321(j)(5)(D). In the 1996 final rule, a nationwide, regional or other generic plan is acceptable. The plan holder was not required to account for different response locations.

Table 3 outlines the specific differences between a basic and comprehensive OSRP. The shaded rows of the table indicate requirements that are not part of the basic OSRP, but are included in the comprehensive OSRP requirements in 49 CFR 131(b).

TABLE 3—COMPARISON OF CURRENT BASIC AND COMPREHENSIVE OSRPS BY REQUIREMENT

Category	Requirement	Type of OSRP	
		Basic	Comprehensive
Preparation	Sets forth the manner of response to a discharge.	Yes	Yes.

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[15] CWA § 311(j)(1)(C). See also 33 U.S.C. 1321(j)(5); CWA § (j)(5), respectively.

[16] 36 FR 24080.

[17] 61 FR 30537

TABLE 3—COMPARISON OF CURRENT BASIC AND COMPREHENSIVE OSRPS BY REQUIREMENT—Continued

Category	Requirement	Type of OSRP	
		Basic	Comprehensive
Preparation	Accounts for the maximum potential discharge of the packaging.	Yes	Yes.
Personnel/Equipment	Identifies private personnel and equipment available for response.	Yes	Yes.
Personnel/Coordination	Identifies appropriate persons and agencies (including telephone numbers) to be contacted, including the National Response Center (NRC).	Yes	Yes.
Documentation	Is kept on file at the principal place of business and at the dispatcher's office.	Yes	Yes.
Coordination	Reflects the requirements of the National Contingency Plan (40 CFR part 300) and Area Contingency Plans.	No	Yes.
Personnel/Coordination	Identifies the qualified individual with full authority to implement removal actions, and requires immediate communications between the individual and the appropriate Federal official and the persons providing spill response personnel and equipment.	No	Yes.
Personnel/Equipment/Coordination	Identifies and ensures by contract or other means the availability of, private personnel, and the equipment necessary to remove, to the maximum extent practicable, a worst-case discharge (including that resulting from fire or explosion) and to mitigate or prevent a substantial threat of such a discharge.	No	Yes.
Training	Describes the training, equipment, testing, periodic unannounced drills, and response actions of personnel, to be carried out under the plan to ensure safety and to mitigate or prevent discharge or the substantial threat of such a discharge.	No	Yes.
Documentation	Is submitted (and resubmitted in the event of a significant change) to the Administrator of FRA.	No	Yes.

B. Advanced Notice of Proposed Rulemaking

On August 1, 2014, PHMSA, in consultation with FRA, published an ANPRM to seek comment on potential revisions to its regulations that would expand the applicability of comprehensive OSRPs to HHFTs transporting petroleum oil based on thresholds of crude oil that apply to an entire train consist (79 FR 45079). On the same day, also in consultation with FRA, PHMSA published the HHFT NPRM, which proposed to define HHFT to mean a single train carrying 20 or more carloads of a Class 3 flammable liquid (79 FR 45015). As discussed above, trains transporting a package (*i.e.*, rail car) containing 3,500 gallons or more of oil are subject to the basic OSRP requirement at 49 CFR 130.31(a). However, part 130 only requires a comprehensive OSRP when the quantity of oil is greater than 42,000 gallons per package. Because the typical rail tank car has a capacity around 30,000 gallons, few if any rail carriers are currently subject to the comprehensive OSRP plan requirements.[18]

In setting the current OSRP threshold quantities, RSPA considered a 1,000,000-gallon threshold that would apply to shipments, rather than individual packages. Specifically, RSPA stated,

> Conversely, the 1,000,000-gallon threshold adopted by EPA [Environmental Protection Agency] is contingent on several factors, including restrictive provisions that the facility may not transfer oil over water to or from vessels and that the facility's proximity to a public drinking water intake must be sufficiently distant to assure that the intake would not be shut down in the event of a discharge. Further, the EPA threshold refers to the capacity not of a single fixed storage tank, but of the entire facility, including barrels and drums stored at the facility. In summary, this example also is not analogous to hazards routinely encountered during transportation by railway and highway.
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> During the June 28, 1993 public meeting, the "substantial harm" threshold was discussed at length, but participants did not agree on what volume of oil reasonably could cause substantial harm to the marine environment. Also, the 42,000-gallon threshold is supported by a number of comments to the docket citing its use by the EPA in related sections of the Code of Federal Regulations. Consequently, RSPA believes its determination to use a threshold value of 42,000 gallons in a single packaging is appropriate and reasonable.[19]

As discussed in the June 17, 1996 RSPA final rule, RSPA recognized that an incident involving the transportation of 1,000,000 gallons of crude oil could reasonably be expected to cause substantial harm, even if not in a single packaging. Under the same CWA authority, delegated to EPA for non-transportation-related facilities, EPA requires Facility Response Plans (FRPs) for facilities with 1,000,000 gallons or more in aggregate oil storage capacity and which meet one or more of the harm factors at 40 CFR part 112.20(f)(1)(ii) and for facilities with transfers of oil over water to or from vessels that have aggregate oil storage capacities of 42,000 gallons or more.[20] EPA also requires Spill Prevention Control and Countermeasure (SPCC) plans under the CWA authority for onshore non-transportation related facilities with an aggregate aboveground oil storage capacity of more than 1,320 gallons of oil or completely buried storage capacity greater than 42,000 gallons and which have a reasonable expectation of an oil discharge to navigable waters or adjoining shorelines.

PHMSA recognizes that a single tank car is not likely to hold 42,000 gallons of crude oil, but the increasing reliance on HHFTs increases the risk that more than one tank car could rupture during a derailment and result in the discharge of the contents of more than one rail car. RSPA either did not consider this risk or did not consider it significant when it established the current threshold. In the ANPRM, PHMSA sought comments on what impact changing the applicability threshold would have on current business practices for shipping crude oil by rail. The ANPRM also explained that since the typical capacity for a rail tank car used in the transport of crude oil is around 30,000 gallons, a 1,000,000-gallon threshold for oil per train consist would translate to requiring a comprehensive OSRP for trains composed of approximately 35 cars of crude oil. PHMSA expected the business practices for HHFTs would result in train consists that often exceed 35 crude oil tank cars. The ANPRM also explained that a 42,000 gallon per train consist threshold would translate to requiring comprehensive OSRPs for trains composed of approximately two cars of crude oil.

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[18] The 2014 AAR's Universal Machine Language Equipment Register (UMLER) numbers showed 5 tank cars listed with a capacity equal to or greater than 42,000 gallons, and none of these cars were being used to transport oil or petroleum products.

[19] 61 FR 30537.

[20] The terms comprehensive plan, oil spill response plan (OSRP) and facility response plan (FRP) are often used interchangeably.

Also in the ANPRM, PHMSA sought comments on nine questions to inform our understanding of adjusting the threshold quantities that would trigger comprehensive OSRP requirements for HHFTs of petroleum oil as well as adjusting the plan requirements. PHMSA requested that comments reference a specific portion of the ANPRM, explain the reason for any recommended change, include supporting data, and explain the source, methodology, and key assumptions of the supporting data.

The ANPRM described the consequences, including environmental impacts, of several recent HHFT derailments, including Lac-Mégantic, Quebec, Canada; Aliceville, Alabama; and Casselton, North Dakota. In response to its participation in the investigation of the Lac-Mégantic accident, the NTSB issued Safety Recommendation R–14–05, which requested that PHMSA revise the spill response planning thresholds prescribed in 49 CFR part 130 to require comprehensive OSRPs that effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and other petroleum products. In this recommendation, the NTSB raised a concern that, "[b]ecause there is no mandate for railroads to develop comprehensive plans or ensure the availability of necessary response resources, carriers have effectively placed the burden of remediating the environmental consequences of an accident on local communities along their routes." In light of these incidents (as well as others described in this rulemaking and the accompanying regulatory impact analysis) and NTSB Safety Recommendation R–14–05, PHMSA is now proposing to revise the applicability and requirements for comprehensive OSRPs.

C. Summary of Proposed Oil Spill Response Requirements

A summary of the Clean Water Act statutory language, the current regulations of 49 CFR part 130 for comprehensive plans, and the proposed changes to the comprehensive plan requirements under this rulemaking are further described in the Tables 4, 5, & 6 below.

TABLE 4—APPLICABILITY COMPARISON

CWA statute	Current regulatory applicability for comprehensive plans	Proposed changes to applicability for comprehensive plans
33 U.S.C. 1321(j)(5)(A)(i)—The President shall issue regulations which require an owner or operator of a tank vessel or facility described in subparagraph (C) to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst-case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.	*49 CFR Part 130*—Comprehensive plan requirements include both the general elements for the basic plan in 130.31(a) and the additional measures in 130.31(b).	*49 CFR Part 130*—Restructures part 130 to include comprehensive oil spill response plans in subpart C. Provides general requirements for recordkeeping, plan format and information about response structure to facilitate usability and enforceability of plan requirements. All proposed changes better align the requirements with other regulations for oil spill response plans under other federal agencies, including optional use of the Integrated Contingency Plan (ICP) format.
33 U.S.C. 1321(j)(5)(C)(iv)—An onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.	*§ 130.31(b)(1)*—42,000 gallons of liquid oil in a single package.	*§ 130.101*—Expands the current applicability to include trains transporting: • 42,000 gallons of liquid oil in a single package (current applicability); OR • At least 20 cars of liquid petroleum oil in a continuous block or 35 cars of liquid petroleum oil in a consist.

TABLE 5—PLAN REQUIREMENTS COMPARISON

Plan elements required by CWA statute	Current regulatory comprehensive plan elements	Proposed changes to comprehensive plan elements
33 U.S.C. 1321(j)(5)(D)(i)—A response plan must be consistent with the requirements of the National Contingency Plan and Area Contingency Plans.	*§ 130.31(b)(2)*—A comprehensive plan must be consistent with the requirements of the National Contingency Plan and Area Contingency Plans.	*§ 130.103*—Requires certification that the plan is consistent with a list of specific NCP/ACP requirements for "minimum compliance," to clarify the elements of NCP/ACP applicable to rail shipments.
33 U.S.C. 1321(j)(5)(D)(ii)—A response plan must identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate federal official and the persons providing personnel and equipment.	*§ 130.31(b)(3)*—A comprehensive plan must identify the qualified individual having full authority to implement removal actions, and requires immediate communications between that individual and the appropriate federal official and the persons providing spill response personnel and equipment.	*§§ 130.104–130.105*—Requires identification of qualified individual for each response zone in quickly accessible information summary. Requires that the plan include a checklist of necessary notifications, contact information, and necessary information to clarify communication procedures.

TABLE 5—PLAN REQUIREMENTS COMPARISON—Continued

Plan elements required by CWA statute	Current regulatory comprehensive plan elements	Proposed changes to comprehensive plan elements
33 U.S.C. 1321(j)(5)(D)(iii)—A response plan must identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst-case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge.	*§ 130.31(b)(4)*—A comprehensive plan must identify, and ensure by contract or other means the availability of, private personnel (including address and phone number), and the equipment necessary to remove, to the maximum extent practicable, a worst-case discharge (including a discharge resulting from fire or explosion) and to mitigate or prevent a substantial threat of such a discharge.	*§§ 130.102 & 130.106*—Includes the establishment of response zones, to ensure the availability of personnel and equipment in different geographic route segments. Demonstrate that the response management system uses the National Incident Management System (NIMS) for common terminology and has a manageable span of control, a clearly defined chain of command, and trained personnel to fill each position. Includes requirements to identify the organization, personnel, equipment, and deployment location thereof capable of removal and mitigation of a worst-case discharge.
33 U.S.C. 1321(j)(5)(D)(iv)—A response plan must describe the training to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge.	*§ 130.31(b)(5)*—A comprehensive plan must describe the training to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge.	*§ 130.107*—Requires certification and documentation that employees have been trained in carrying out their responsibilities under the plan.
33 U.S.C. 1321(j)(5)(D)(iv)—A response plan must describe the equipment testing to be carried out under the plan.	*§ 130.31(b)(5)*—A comprehensive plan must describe the equipment testing to be carried out under the plan.	*§ 130.108*—Requires description and certification that equipment testing meets the manufacturer's minimum requirements, which is equivalent to U.S. Coast Guard (USCG) requirements.
33 U.S.C. 1321(j)(5)(D)(iv)—A response plan must describe the periodic unannounced drills to be carried out under the plan.	*§ 130.31(b)(5)*—A comprehensive plan must describe the periodic unannounced drills to be carried out under the plan.	*§ 130.108*—Requires drills to be equivalent to the DOT PREP standard. PREP includes sections for each agency regulated under CWA.
33 U.S.C. 1321(j)(5)(D)(iv)—A response plan must describe the response actions of persons on the vessel or at the facility.	*§ 130.31(b)(5)*—A comprehensive plan must describe the response actions of facility personnel, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge, or the substantial threat of such a discharge.	*§ 130.106*—Requires a description of all of the following: • Activities and responsibilities of railroad personnel prior to arrival of Qualified Individual (QI) • QI responsibilities and actions • Procedures coordinating railroad/QI actions with the Federal On-Scene Coordinator
33 U.S.C. 1321(j)(5)(D)(v)—A response plan must be updated periodically.	49 CFR part 130 does not specify clearly if or when the railroad must update a comprehensive plan.	*§ 130.109*—Clarifies that plans should be reviewed internally in full every 5 years at a minimum, when new or different conditions or information changes within the plan, or after a discharge requiring plan activation occurs.
33 U.S.C. 1321(j)(5)(D)(vi)—A response plan must be resubmitted for approval of each significant change.	*§ 130.31(b)(6)*—Is submitted, and resubmitted in the event of any significant change, to the Federal Railroad Administrator (for tank cars).	*§ 130.109*—Requires plans to be resubmitted to FRA in the event of new or different operating conditions or information that would substantially affect the implementation of the plan. Provides examples of significant changes for clarity.

TABLE 6—PLAN APPROVAL COMPARISON

Approval and review required by CWA statute	Current regulatory requirement	Proposed changes
33 U.S.C. 1321(j)(5)(E)—With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank vessel, nontank vessel, or offshore facility, the President shall— (i) promptly review such response plan; (ii) require amendments to any plan that does not meet the requirements of this paragraph;	*§ 130.31(b)(6)*—Is submitted, and resubmitted in the event of any significant change, to the Federal Railroad Administrator (for tank cars).	*§ 130.111*—Requires explicit approval of plans by FRA. Specifies process for FRA to notify railroads of any sections of alleged deficiencies in plan and provides railroads the opportunity to respond. Clarifies railroads will review plans five years from the date of last approval and resubmit plans after significant changes.

TABLE 6—PLAN APPROVAL COMPARISON—Continued

Approval and review required by CWA statute	Current regulatory requirement	Proposed changes
(iii) approve any plan that meets the requirements of this paragraph; (iv) review each plan periodically thereafter; and (v) in the case of a plan for a nontank vessel, consider any applicable State-mandated response plan in effect on August 9, 2004, and ensure consistency to the extent practicable		
33 U.S.C. 1321(j)(5)(F) A tank vessel, nontank vessel, offshore facility, or onshore facility required to prepare a response plan under this subsection may not handle, store, or transport oil unless— (i) in the case of a tank vessel, nontank vessel, offshore facility, or onshore facility for which a response plan is reviewed by the President under subparagraph (E), the plan has been approved by the President; and (ii) the vessel or facility is operating in compliance with the plan.		*§ 130.101*—Prohibits the transportation of oil subject to comprehensive plans unless the requirements for submission, review and approval in § 130.111 are met and the railroad is operating in compliance with the plan.
33 U.S.C. 1321(j)(5)(G)—Notwithstanding subparagraph (E), the President may authorize a tank vessel, nontank vessel, offshore facility, or onshore facility to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank vessel, nontank vessel, or facility, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst-case discharge or a substantial threat of such a discharge.		*§ 130.111*—Allows railroads to temporarily continue operating without plan approval, provided the plan has been submitted to FRA and the railroad submits a certification to FRA that the railroad has obtained, through contract or other approved means, the necessary personnel and equipment to respond, to the maximum extent practicable, to a worst-case discharge or a substantial threat of such a discharge. Requires that the certificate be signed by the qualified individual or an appropriate corporate officer.

PHMSA solicits comment on the proposed oil spill response plan requirements in the following areas:

1. On ways to effectively provide regulatory flexibility to bona fide small entities that pose a lesser safety risk and may not be able to comply with the requirements of the proposed rule due to cost concerns, limited benefit, or practical considerations.
2. On whether the 12-hour response time is sufficient for all areas subject to the plan, or whether a shorter response time (*e.g.,* 6-hours) is appropriate for certain areas (*e.g.* High Volume Areas) which pose an increased risk for higher consequences from a spill; on criteria to define such "High Volume Areas" where a shorter response time should be required, as well as whether the definition for "High Volume Area" in 49 CFR 194.5 (excluding pipeline diameter) captures this increased risk, or if there is other criteria which can be used to reasonably and consistently identify such areas for rail; on whether requiring response resources to be capable of arriving within 6 hours will lead to improvements in response, and for specific evidence of these improvements; and on whether the final rule should have a longer response time than 12 hours for spills for all other areas subject to the plan requirements in order to offset costs from requiring shorter response times for High Volume Areas.
3. On whether the proposed training requirements are sufficient, or whether the Qualified Individual should be trained to the Incident Commander level using the Incident Command System (ICS).

D. Related Actions

PHMSA and FRA have taken a comprehensive approach to responding to the risks posed by large quantities of flammable liquids by rail. The HHFT Final Rule outlines many of these actions under the Sections III ("Regulatory Actions Addressing Rail Safety") and IV ("Non-Regulatory Actions Addressing Rail Safety").[21] A brief summary of significant actions relating to response planning and information sharing are included in this document.

1. Call to Action

On January 9, 2014, the Secretary issued a "Call to Action" to actively engage all the stakeholders in the crude oil industry, including CEOs of member companies of the American Petroleum Institute (API) and CEOs of railroads. In a meeting held on January 16, 2014, the Secretary and the Administrators of PHMSA and FRA requested that offerors and carriers identify prevention and mitigation strategies that can be implemented quickly. As a result of this meeting, the rail and crude oil industries agreed to voluntarily consider or implement potential improvements, including speed restrictions in high consequence areas, alternative routing, the use of distributive power to improve braking, and improvements in emergency response preparedness and training. The following are some of the call-to-action items related to emergency response and classification over the past year.

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[21] *See* 80 FR 26654 and 80 FR 26657, respectively.

In February 2014, under an agreement between DOT and AAR, railroads developed a $5 million specialized crude-by-rail training and tuition assistance program for local first responders at the Transportation Technology Center, Inc. (TTCI). The funding provided for the development of a training curriculum for emergency responders in petroleum crude oil response and tuition assistance for over a 1,500 first responders in 2014.[22]

As a result of the call to action in 2014, the rail and oil industry, along with PHMSA's input, developed a RP designed to improve rail safety through the proper classification and loading of crude oil. This effort was led by the API and resulted in the development of an ANSI recognized recommend practice (see ANSI/API RP 3000, "Classifying and Loading of Crude Oil into Rail Tank Cars"). This recommend practice, which, during its development, went through a public comment period in order to be designated as an American National Standard, addresses the proper classification of crude oil for rail transportation and the quantity measurement for overfill prevention when loading crude oil into rail tank cars. RP 3000 provides guidance on the material characterization, transport classification, and quantity measurement for overfill prevention of petroleum crude oil for the loading of rail tank cars.

2. Emergency Order

As noted in the Executive Summary above, on May 7, 2014, DOT issued the Order.[23] The Order requires each railroad transporting in commerce within the U.S. 1,000,000 gallons or more of Bakken crude oil in a single train to provide certain information in writing to the SERC for each state in which it operates such a train. The Order requires railroads to provide (1) the expected volume and frequency of affected trains transporting Bakken crude oil through each county in a state (or a commonwealth's equivalent jurisdiction (*e.g.,* Louisiana parishes, Alaska boroughs, Virginia independent cities), (2) the routes over which the identified trains are expected to be operated; (3) a description of the petroleum crude oil and applicable emergency response information, and (4) contact information for at least one responsible party at the railroad. The Order requires railroads to provide SERCs updated notifications when there is a "material change" in the volume of affected trains.

DOT subsequently issued a frequently asked questions document clarifying several aspects of the Order (*e.g.,* the required level of specificity of the data to be shared, the duty of railroads to provide updated information to the SERCs and the railroad's ability to share the same data with state agencies other than the SERCs). *See* document number 0003 in Docket No. DOT–OST–2014–0067 and the more detailed discussion of the Order in the "HHFT Information Sharing Notification" section of this discussion.

3. Rulemaking Actions

On May 8, 2015, PHMSA, in consultation with FRA, published the HHFT Final Rule. Several provisions adopted in the HHFT Final Rule relate to this NPRM, including the definition of a HHFT and the information sharing portion of the route analysis and consultation requirements.

The HHFT Final Rule defined *High-Hazard Flammable Train* as a continuous block of 20 or more tank cars in a single train or 35 or more cars dispersed through a train loaded with a Class 3 flammable liquid. This definition served as the applicable threshold of many of the requirements in the HHFT Final Rule and is the threshold at which, per the HHFT Final Rule, the route analysis and consultation requirements of § 172.820 apply to HHFTs. That section prescribes additional safety and security planning requirements for the transportation of certain hazardous materials by rail. Prior to the HHFT Final Rule, § 172.820 applied to the rail transportation of bulk packages of materials poisonous by inhalation and certain explosive and radioactive materials. In the HHFT Final Rule, PHMSA expanded the applicability of § 172.820 to include HHFTs. Thus, in accordance with the HHFT Final Rule, rail carriers that operate HHFTs must annually assess the safety and security risks of routes used to transport those materials, as well as all practicable alternative routes, using a minimum of 27 risk factors identified in appendix D to part 172 of the HMR. Based on this analysis, rail carriers must identify and use the safest and most secure routes for the transportation of HHFTs (as well as the other covered hazardous materials). Paragraph (g) of § 172.820 requires rail carriers subject to the rule to identify a point of contact for routing issues and provide that contact information to the following:

- State and/or regional fusion centers that have been established to coordinate with State, local, and tribal officials on security issues within the area encompassed by the rail carrier's rail system;[24] and
- State, local, and tribal officials in jurisdictions that may be affected by a rail carrier's routing decisions and who have contacted the carrier regarding routing decisions.

4. Safety Advisories

Safety advisories are documents published by PHMSA and FRA in the **Federal Register** that inform the public and regulated community of a potential dangerous situation or issue. In addition to safety advisories, PHMSA and FRA may also issue other notices, such as safety alerts. PHMSA and FRA published the following safety advisories and notices related to information sharing and emergency response planning.

On April 17, 2015, PHMSA issued a safety advisory notice (Notice No. 15–7; 80 FR 22781) to remind hazardous materials shippers and carriers of their responsibility to ensure that current, accurate, and timely emergency response information is immediately available to emergency response officials for shipments of hazardous materials, and that such information is maintained on a regular basis.[25] This notice outlined existing regulatory requirements applicable to hazardous materials shippers (including re-offerors) and carriers found in the HMR, specifically in subpart G of part 172.

PHMSA Notice 15–7 emphasized that the responsibility to provide accurate and timely information is a shared responsibility for all persons involved in the transportation of hazardous materials. This information includes, but is not limited to, identification and volume of the specific hazardous material; location of the hazardous material on the train; risks of fire and explosion; immediate precautions to be taken in the event of an incident; initial methods for handling spills or leaks in the absence of fire; and preliminary first aid measures. It is a shipper's responsibility to provide accurate emergency response information that is consistent with both the information provided on a shipping paper and the material being transported. Likewise, re-offerors of hazardous materials must ensure that this information can be verified to be accurate, particularly if the material is altered, mixed, or otherwise repackaged prior to being placed back into transportation. In addition, carriers must ensure that emergency response information is maintained appropriately, is accessible, and can be communicated immediately in the event of a hazardous materials incident. All of this information must be immediately available to any person who, as a representative of Federal, State, local or tribal governments (including a SERC), responds to an incident involving hazardous material or is conducting an investigation which involves a hazardous material.

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[22] TTCI is wholly owned subsidiary of the Association of American Railroads. TTCI is a transportation research and testing organization, providing emerging technology solutions for the railway industry throughout North America and the world.

[23] *http://www.dot.gov/briefing-room/emergency-order.*

[24] *http://www.dhs.gov/fusion-center-locations-and-contact-information.*

[25] See: *http://www.gpo.gov/fdsys/pkg/FR-2015-04-23/pdf/2015-09436.pdf.*

On April 17, 2015 FRA and PHMSA also issued a joint safety advisory notice (FRA Safety Advisory 2015–02; PHMSA Notice No. 15–11; 80 FR 22778). The agencies issued the joint safety advisory notice to remind railroads operating an HHFT—defined as a train comprised of 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block, or a train with 35 or more loaded tank cars of a Class 3 flammable liquid across the entire train—as well as the offerors of Class 3 flammable liquids transported on such trains, that certain information may be required by PHMSA and/or FRA personnel during the course of an investigation immediately following an accident.

5. Stakeholder Outreach

PHMSA and FRA have also taken specific actions to develop appropriate response outreach and training tools to mitigate the impact of future incidents. The following are some of PHMSA's actions related to emergency response and information sharing for rail crude oil incidents over the past year.

In February 2014, PHMSA hosted a stakeholder meeting with participants from the emergency response community, railroad industry, Transport Canada, and its federal agency partners, FRA and Federal Motor Carrier Safety Administration. The objective was to discuss emergency preparedness related to incidents involving transportation of crude oil by rail. The discussion topics included: Current state of crude oil risk awareness and operational readiness/capability; familiarity with bulk shippers of crude oil and emergency response plans and procedures; available training resources (*e.g.,* sources, accessibility, gaps in training); and the needs of emergency responders/public safety agencies.

In May 2014, in conjunction with the Virginia Department of Fire Programs, PHMSA hosted a "Lessons Learned" forum that consisted of a panel of fire chiefs and emergency management officials from some of the jurisdictions that experienced a crude oil or ethanol rail transportation incident. The purpose of this forum was to share firsthand knowledge about their experiences responding to and managing these significant rail incidents. In attendance were public safety officials from Aliceville, AL; Cherry Valley, IL; Cass County, ND; and Lynchburg, VA. Based on the input received from the forum participants, PHMSA published the "*Crude Oil Rail Emergency Response Lessons Learned Roundtable Report,*" which outlined the key factors that were identified as having a direct impact on the outcomes of managing a crude oil transportation incident.[26]

While the "Lessons Learned Roundtable Report" was focused on public emergency responders, some of the key findings also addressed the railroads:

- All agencies involved in emergency response operations need to understand NIMS [National Incident Management System], their specific role within NIMS, and must have a representative assigned to the Command Post to facilitate communications and coordination with all response assets.
- Pre-incident planning and communication with all organizations, specifically shippers and carriers (railroads), is essential to learn about the product(s) being transported and the availability of emergency response resources.
- Emergency responders are not fully aware of the response resources available from the railroads and other organizations (*e.g.,* air monitoring capabilities). This information would be useful in pre-incident planning, preparedness, and response operations.In June 2014, in partnership with FRA and the U.S. Fire Administration (USFA),

PHMSA hosted a stakeholder meeting with hazardous materials response subject matter experts from public safety organizations, railroads, government, and industry to discuss the best practices for responding to a crude oil incident by rail. In coordination with the working group, PHMSA drafted the "*Commodity Preparedness and Incident Management Reference Sheet.*" This document contains incident management best practices for emergency response operations, including a risk-based hazardous materials emergency response operational framework. The framework provides first responders with key planning, preparedness, and response principles to successfully manage a crude oil rail transportation incident. The document also assists fire and emergency services personnel in decision-making and developing an appropriate response strategy to an incident (*i.e.,* defensive, offensive, or non-intervention strategies).[27] In partnership with the USFA's National Fire Academy (NFA), a series of six coffee break training bulletins were published and widely distributed to the emergency response community providing reference to this response document.[28]

In October 2014, to further promote the "*Commodity Preparedness and Incident Management Reference Sheet,*" PHMSA contracted with the Department of Energy, Mission Support Alliance-Hazardous Materials Management and Emergency Preparedness (MSA–HAMMER) to develop the *Transportation Rail Incident Preparedness and Response (TRIPR) for Flammable Liquid Unit Trains* training modules. In 2015, the web-accessible Transportation Rail Incident Preparedness and Response (TRIPR) modules became available to provide emergency responders with critical information on best practices related to rail incidents involving Class 3 flammable liquids such as crude oil and ethanol.[29] The curriculum consists of nine training modules that focus on key response functions and incorporates three animated, interactive training scenarios and introductory videos to help instructors lead tabletop discussions. TRIPR offers a flexible approach to increasing the awareness of emergency response personnel on the best practices and principles related to rail incidents involving Class 3 flammable liquids. A key component of this initiative is to learn from past experiences and to leverage the expertise of public safety agencies, rail carriers, and industry subject matter experts in order to prepare first responders to safely manage rail incidents. These modules are not intended to be a standalone training program, but are offered to supplement existing programs.

In December 2014, PHMSA hosted a follow-up meeting which re-engaged the emergency response stakeholder group to allow all parties within the Federal Government, railroad industry, and response community to provide updates on the various emergency response-related initiatives aimed to improve community awareness and preparedness for responding to incidents involving crude oil and other Class 3 flammable liquid shipments by rail.

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[26] See *http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_0903D018579BF84E6914C0BB932607F5B3F50300/filename/Lessons_Learned_Roundtable_Report_FINAL_070114.pdf.*

[27] This document has been widely distributed throughout the emergency response community and is also available on the PHMSA Operation Safe Delivery Web site at *http://www.phmsa.dot.gov/hazmat/osd/emergencyresponse.*

[28] See *http://www.usfa.fema.gov/training/coffee_break/hazmat_index.html.*

[29] See *http://www.phmsa.dot.gov/hazmat/osd/emergencyresponse/TRIPR.*

In addition to PHMSA's efforts mentioned above, in January 2015, the National Response Team (NRT), led by the Environmental Protection Agency (EPA), conducted a webinar, titled "*Emerging Risks, Responder Awareness Training for Bakken Crude Oil,*" to educate responders on Bakken crude oil production and transportation along with the health and safety issues facing first responders. In addition to the training webinar, the NRT also intends to conduct a large-scale exercise scenario in 2015 to assess Federal, State, and local response capabilities to a crude oil incident.

Also in January 2015, the Environmental Protection Agency (EPA), along with other federal partners, including FEMA, USCG, DOE, DOT, and DHS, hosted conference calls with State officials and representatives from the appropriate offices, boards, or commissions that play a role in preparing or responding to an incident involving crude-by-rail. The purpose of these discussions was to gain a better understanding of how States are preparing to respond to rail incidents involving crude oil and to identify key needs from each State. Questions centered on what actions (*e.g.,* planning, training, exercises) have been planned or conducted in the State or local communities, what communities or areas have the greatest risk, what regional actions or activities states have participated in and any other related concerns states would like to discuss.

In August 2015 and May 2016, PHMSA representatives attended the Northwest Tribal Emergency Management Council's annual meeting in Spokane, Washington. This provided PHMSA with the opportunity to speak directly with tribal emergency management leaders and emphasize the importance of effective tribal and federal cooperation.

In addition to these sources of information described above, PHMSA provides resources to the emergency response community in many other forms. Some of the key resources provided by PHMSA include:

- Hazardous Materials Emergency Preparedness (HMEP) Grant Program: On an annual basis, PHMSA awards over $20M in grant funding through its HMEP grant program to States, Territories, and Tribes to carry out planning and training activities to ensure state and local emergency responders are properly prepared and trained to respond to hazmat transportation incidents. These activities include conducting hazardous materials commodity flow surveys, drafting and updating hazmat operations plans, funding emergency response exercises, and NFPA–472 related training.[30]

- Assistance for Local Emergency Response Training (ALERT) Grant: Additionally, in FY15 PHMSA will award its ALERT grant. This is a competitive grant opportunity using prior year recovery funds to a non-profit organization(s) that can provide direct or web-based hazardous materials training for volunteer or remote emergency responders. The priority for this grant will be emergency response activities for the transportation of crude oil, ethanol and other flammable liquids by rail. The anticipated award for this grant is September 2015.

- Emergency Response Guidebook: This guidebook provides emergency responders with a go-to manual to help deal with hazardous materials incidents during the critical first 30 minutes. It is also available as a free mobile app. The Emergency Response Guidebook is available at: *http://www.phmsa.dot.gov/hazmat/outreach-training/erg.*[31]

- Hazardous Materials Information Center: The Center provides live, one-on-one assistance Monday-Friday, 9 a.m. to 5 p.m. (ET). The Hazardous Materials Information Center is available at: *http://phmsa.dot.gov/hazmat/standards-rulemaking/hmic.*[32]

- Outreach: PHMSA has a staff of highly trained individuals skilled in training known as the Hazardous Materials Safety Assistance Team (HMSAT). The HMSAT team is part of our field operations personnel and is available in all regions of the United States to answer questions and provide on-site assistance to customers of the Hazardous Materials Transportation-State and Local Education (HMT–SALE) program, State, local and tribal governments, and industry associations with technical issues, outreach, training, and compliance assistance in the field of hazardous materials transportation: *http://www.phmsa.dot.gov/phmsa-ext/feedback/hmsatPresenterRequestForm.jsp.*[33]

A myriad of other sources of information and support are available to State, local and tribal governments' emergency preparedness and response efforts, including other federal agencies, and industry groups. For example, the U.S. Department of Homeland Security operates the National Operations Center 24 hours a day, 365 days a year to interact with State governors, emergency responders, and perform critical infrastructure operations across the country to prepare for, respond to, and recover from hazardous materials incidents.

Complementing the Federal Government's efforts, the railroad and shipping industries have also made efforts to improve crude oil by rail safety. API has built new partnerships between rail companies and oil producers. At the request of FRA, API is developing an outreach program to train first responders in HHFT derailment response throughout the U.S., particularly in states that have seen a rise in the transport of crude oil by rail. The oil and rail industries have worked to identify where existing training initiatives and conferences can be held to provide the training to as many responders as possible. The AAR is also worked to develop an inventory of emergency response resources and resource staging locations along routes utilized by HHFTs.

The railroad industry, hazardous materials shippers, and other organizations also provide emergency response assistance and training to communities through a variety of means, including the Transportation Community Awareness and Emergency Response (TRANSCAER®) program. The TRANSCAER program offers emergency response information, emergency planning assistance, and training to Local Emergency Planning Committees (LEPCs) under the AAR Circular OT–55–O protocol. AAR and API are working together to produce a crude oil by rail safety training video through their partnership with the TRANSCAER program.

The AAR Circular OT–55–O also outlines a procedure whereby local emergency response officials and emergency planning organizations may obtain a list of the types and volumes of hazardous materials that are transported through their communities. On January 27, 2015, AAR published revisions to the Circular for members to "provide bona fide emergency response agencies or planning groups with specific commodity flow information covering all hazardous commodities transported through the community for a 12 month period in rank order." Previously only the top 25 commodities were available. The railroad industry considers this information to be restricted information for business confidential and security reasons, and that the recipient of the information must agree to release the information only to bona fide emergency response planning and response organizations and not distribute the information publicly in whole or in part without the individual railroad's express written permission. Additional description of voluntary efforts by the regulated community is provided under the Section V, Subsection G ("Voluntary Actions") of this rulemaking.

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[30] *http://www.phmsa.dot.gov/hazmat/grants.*

[31] *http://www.phmsa.dot.gov/hazmat/outreach-training/erg.*

[32] *http://phmsa.dot.gov/hazmat/standards-rulemaking/hmic.*

[33] *http://www.phmsa.dot.gov/phmsa-ext/feedback/hmsatPresenterRequestForm.jsp.*

E. HHFT Information Sharing Notification

As previously discussed, on May 7, 2014, the Secretary of Transportation, under the authority of 49 U.S.C. 5121(d), issued an Emergency Restriction/Prohibition Order in Docket No. DOT–OST–2014–0067 (Order).[34] The Order requires each railroad transporting in commerce within the United States, 1,000,000 gallons or more of Bakken crude oil in a single train to provide certain information in writing to the SERC for each state in which it operates such a train. The Order requires railroads to provide (1) the expected volume and frequency of affected trains transporting Bakken crude oil through each county in a state (or a commonwealth's equivalent jurisdiction (*e.g.,* Louisiana parishes, Alaska boroughs, Virginia independent cities)), (2) the routes over which the identified trains are expected to be operated; (3) a description of the petroleum crude oil and applicable emergency response information, and (4) contact information for at least one responsible party at the railroad. Further, the EO requires railroads to provide SERCs updated notifications prior to any "material change" in the volume of affected trains and requires railroads to provide copies of notifications made to each SERC to FRA upon request.

DOT subsequently issued a frequently asked questions document (FAQs) clarifying several aspects of the Order.[35] The FAQs clarified that for purposes of the Order, "Bakken crude oil" is any crude oil tendered to railroads for transportation from any facility located within the Williston Basin (North Dakota, South Dakota, and Montana in the United States or Saskatchewan or Manitoba in Canada).

Second, the FAQs clarified the level of specificity of the traffic data railroads are required to provide the SERCs and the requirement to provide updated information in anticipation of a "material change" in estimated volumes or frequency of trains traveling through a particular local jurisdiction. Specifically, citing the Order's stated goal of providing first responders an understanding of the volume and frequencies with which Bakken crude oil is transported through their communities so that they can prepare appropriate response plans, the FAQs explained that when reporting traffic data required by the Order, railroads should look at their aggregate traffic of Bakken crude oil through the jurisdiction for the prior year and after considering any reasonably anticipated changes in that traffic, provide a reasonable estimate of the weekly traffic along the affected routes. The FAQs explained that the estimate could be provided in range to account for normal variations in traffic, but any changes of 25 percent or more from the aggregate estimates provided are considered a "material change" requiring a railroad to provide updated information to the relevant SERC.

Third, the FAQs addressed issues related to the potential confidentiality of the data railroads submit to SERCs under the Order. DOT explained that the data is intended for persons with a need-to-know; that is, first responders at the state and local level, as well as other appropriate emergency response planners. Noting that historically railroads and states have routinely entered into confidentiality agreements prior to railroads providing states with information on commodities transported in trains within their jurisdictions, the FAQs clarified that railroads may require reasonable confidentiality agreements prior to providing the required information to SERCs or other state agencies. As discussed later in the following section, confidentiality concerns have been the subject of further analysis and discussion.

Fourth, recognizing that different states have different methods and agencies responsible for emergency response planning and preparedness within their jurisdictions and a state's SERC may not always be the state agency most directly involved in emergency response planning and preparedness, the FAQs provided that if a state agrees that it would be advantageous for the information required by the Order to be shared with another state agency (such as a fusion center) involved with emergency response planning and/or preparedness, as opposed to the SERC, a railroad may share the required information with that agency instead of the SERC.

Finally, the FAQs addressed railroads' responsibilities as applied to tribal lands and clarified that the Order does not require railroads to reach out to Tribal Emergency Response Commissions (TERCs), as DOT itself planned outreach to Tribal leaders to let them know that their TERCs can coordinate with the appropriate SERCs for access to data supplied under the Order. The FAQs did make clear, however, that railroads must ensure that SERCs (or relevant fusion centers or other state agencies) are also supplied with information for traffic through tribal lands.

Following the issuance of the Order, some stakeholders, including the Association of American Railroads (AAR) and the American Shortline and Regional Railroad Association (ASLRRA), expressed concern that the crude oil routing information the Order requires railroads to provide to SERCs is sensitive information from a security perspective and should only be available to persons with a need-to-know the information (*e.g.,* emergency responders and emergency response planners). The AAR and ASLRRA also expressed the view that commercially sensitive information should remain confidential and not be publically available. *See* the discussion of AAR and ASLRRA's concerns published at 79 FR 59891 on October 3, 2014 (FRA's "Proposed Agency Information Collection Activities; Notice and Request for Comments" related to the Order). After consulting with DOT, the Department of Homeland Security (DHS) and the Transportation Security Administration (TSA), FRA responded to AAR and ASLRRA's concerns, by explaining that the information the Order requires railroads to supply to SERCs is not commercially sensitive or Security Sensitive Information (SSI) defined by DOT, DHS, or TSA regulations. *Id.* at 59892. FRA further noted that DOT found no basis to conclude that the public disclosure of the information is detrimental to transportation safety. *Id.*

After the issuance of the Emergency Order in August 2014, PHMSA published the High-Hazard Flammable Train NPRM. In that NPRM, PHMSA proposed to codify the requirements of the Emergency Order and requested public comment on the various facets of that proposal. Specifically, PHMSA proposed to add a new § 174.310, "Requirements for the operation of high-hazard flammable trains," to subpart G of part 174. Proposed § 174.310 set forth additional requirements for the operation of HHFTs including making such trains subject to the route analysis and consultation requirements of existing § 172.820, certain speed restrictions and specific braking standards, as well as notifications to SERCs consistent with the Order. Specifically, paragraph (a)(2) of proposed § 174.310 required railroads transporting in a single train 1,000,000 gallons or more of Bakken crude to provide certain information about these trains to the SERCs or other appropriate state delegated entities in which it operates. Generally consistent with the Order, the NPRM's proposal required railroads to provide the following information to the SERCs or "other appropriate state delegated entities": (1) A reasonable estimate of the number of affected trains that expected to travel, per week, through each county within the state; (2) the routes over which the affected trains will be transported; (3) a description of the crude oil being transported and applicable emergency response information; and (4) updates in the event of any "material change." Table 7 depicts the comments received in response to this proposal, representing approximately 99,856 signatories.

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[34] *http://www.dot.gov/briefing-room/emergency-order.*

[35] *See* document number 0003 in Docket No. DOT–OST–2014–0067.

TABLE 7—COMMENTER COMPOSITION: NPRM NOTIFICATION

Commenter type	Signatories
Non-Government Organization	90,869
Individuals	8,888
Industry stakeholders	22
Government organizations or representatives	77
Totals	99,856

The vast majority of commenters generally supported PHMSA's efforts to establish some level of notification requirements for the operation of trains carrying large quantities of crude oil as proposed in § 174.310(a)(2). However, commenters were divided on some of the specific requirements of the proposal. Some commenters were opposed to the public dissemination of information, citing business confidentiality or security concerns.

Based on the public comments on the NPRM as well as PHMSA and FRA's analysis of the issues from the HHFT Final Rule, PHMSA did not adopt the notification requirements of proposed § 174.310(a)(2). PHMSA determined that the expansion of the existing route analysis and consultation requirements of 49 CFR 172.820 to include HHFTs would be the best approach to ensuring that emergency responders and others involved with emergency response planning and preparedness would have access to sufficient information regarding crude oil shipments moving through their jurisdictions to enable them to adequately plan and prepare from an emergency response perspective. PHMSA reasoned that expanding the existing route analysis and consultation requirements of § 172.820 (which already apply to the rail transportation of certain hazardous materials historically considered to be highly-hazardous[36]) would preserve the intent of the Emergency Order to enhance information sharing with emergency responders in areas through which HHFTs move and that, in combination with the other new safety requirements in the HHFT Final Rule, obviated the need to continue notification to the SERCs as required by the Order and as proposed in the HHFT NPRM.

After PHMSA published the HHFT Final Rule, FRA, PHMSA and the Department received feedback from stakeholders, expressing concern about the Department's decision to forgo the proactive notification requirements of the Emergency Order and in the NPRM. Those stakeholders include Congressional representatives, State and local government officials, representatives of emergency response and planning organizations, and the public. Generally, these stakeholders expressed the view that given the unique risks posed by the frequent rail transportation of large volumes of flammable liquids, including Bakken crude oil, PHMSA should not eliminate the proactive information sharing provisions of the Order and rely solely on the consultation and communication requirements in existing § 172.820. Stakeholders, including emergency responders, expressed concern that the HHFT Final Rule may limit the availability of emergency response information by superseding the Order.

In response to these concerns and after further evaluating the issue within the Department, in a May 28, 2015, notice (Notice), PHMSA announced that it would extend the Order indefinitely, while it considered options for codifying the disclosure requirement on a permanent basis.[37] In the Notice, PHMSA recognized the desire of local communities to know what hazardous materials are moving through their cities and towns and noted that transparency is a critical piece of the Department's comprehensive approach to safety. Further, PHMSA expressed its support for the public disclosure of this information to the extent allowed by the applicable state, local and tribal laws and noted that the Order and HHFT Final Rule all emphasize transparency and information sharing. The Notice explained that longstanding federal law requires shippers and offerors of hazardous materials to carry the critical information necessary for emergency responders to respond appropriately to an incident involving the transportation of any hazardous material and to have someone available to provide emergency response information at all times that the hazardous material is in transportation. See 49 CFR 174.26 and part 172, subpart G. PHMSA issued a safety advisory reminding the regulated community of these legal obligations and outlining the myriad of additional emergency response resources available (*e.g.*, PHMSA's Emergency Response Guidebook and Hazardous Materials Information Center, the U.S. Department of Homeland Security's National Operations Center, industry's TRANSCAER® program, as well as AAR's Circular OT–55–N that outlines a procedure whereby local emergency response officials and emergency response planning organizations may obtain a list of the types and volumes of hazardous materials that are transported through their communities). *See* the detailed discussion of PHMSA's April 17, 2015, Safety Advisory and Stakeholder Outreach in Section II, Subsection C ("Summary of Proposed Oil Spill Response Requirements") above.

On December 4, 2015, President Obama signed into law the "Fixing America's Surface Transportation Act of 2015 ("FAST Act"). The FAST Act includes the "Hazardous Materials Transportation Safety Improvement Act of 2015" at §§ 7001 through 7311, which provides direction for the hazardous materials safety program. Section 7302 directs the Secretary to issue regulations that require real-time sharing of the electronic train consist information for hazardous materials shipments and require advanced notification of certain HHFTs. The DOT will address the requirements in § 7302 related to electronic train consists in a future rulemaking. The FAST Act directs Class I railroads to provide advanced notification and information on high-hazard flammable trains to each State Emergency Response Commission (SERC), consistent with the notification requirements in the Order. The FAST Act requires that SERCs receiving this advanced notification must provide the information to law enforcement and emergency response agencies upon request. The FAST Act also directs the Secretary to establish security and confidentiality protections for electronic train consist information and advanced notification information.

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[36] TSA regulations under 49 CFR 1580.100 define certain types and quantities of material as "rail security sensitive materials (RSSM). Class 3 flammable liquids, including crude oil and ethanol are not defined as RSSM.

[37] *http://www.phmsa.dot.gov/hazmat/phmsa-notice-regarding-emergency-response-notifications-for-shipments-of-petroleum-crude-oil-by-rail.*

The FAST Act limits the applicability of the advanced notification requirements for HHFT to the Class I railroads. In this NPRM, PHMSA is proposing that the information-sharing requirements apply to all railroads with HHFT operations. This proposal fulfills the Congressional mandate and is within PHMSA's regulatory authority. Through the authority of Federal hazmat transportation law and the delegation of this authority to PHMSA by the Secretary, PHMSA is responsible for overseeing a hazmat safety program that protects against the risks to life, property, and the environment inherent in the transportation of hazmat in commerce. In proposing that the information-sharing requirements apply to all railroads with HHFT operations, PHMSA is addressing the provisions of the FAST Act, as well as acting in accordance with our delineated authority by addressing the potential safety risks posed by HHFT operations of all railroads. Requiring advanced notification from Class I, II, and III railroads is consistent with DOT's Order addressing information-sharing. While we acknowledge that the HHFT operations of Class II and Class III railroads are relatively limited in comparison to those of Class I railroads, and thus pose fewer safety risks in the rail transportation system, the HHFT operations of Class II and Class III railroads nonetheless pose safety risks that justify adherence to the proposed information-sharing requirements of this NPRM.

Recent railroad accidents demonstrate that accidents involving HHFTs are not limited to Class I railroads. In particular, the accidents in Aliceville, AL, and New Augusta, MS involved two Class III railroads, the Alabama Gulf Coast Railway and Illinois Central Railroad. If PHMSA were to limit the requirement to Class I railroads as described in the FAST Act, these railroads and other Class II or Class III railroads would not be required to provide advanced notification and information to SERCs or TERCs. Therefore, in order to effectively address the safety risks posed by HHFTs by increasing the level of information sharing between railroads and SERCs, TERCs, and other affected jurisdictions, PHMSA proposes that the information-sharing requirements of this NPRM apply to all classes of railroads that transport HHFTs. The intent of the information sharing provision of this rule is to ensure that local emergency responders and emergency planning officials have access to sufficient information regarding the movement of HHFTs in their jurisdictions to adequately plan and prepare for emergency events involving HHFTs. This purpose is reaffirmed by the FAST Act's requirements addressing requirements for both sharing and protection of information required by the advanced notification. Under the Emergency Planning and Community Right-to-Know Act (EPCRA) in Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), the Governor of each state is required to establish a state emergency response commission (SERC). The SERC is responsible for establishing emergency planning districts and appointing, supervising, and coordinating local emergency planning committees (LEPCs). EPCRA section 303 requires LEPCs to develop a comprehensive emergency response plans for their emergency planning districts. The SERC is also responsible for reviewing the emergency response plans and make recommendations to revise the plans as necessary for each community. The emergency response plan includes facilities that handle extremely hazardous substances (EHSs) defined under section 302 of EPCRA as well as transportation routes of EHSs. Many LEPCs include EHSs as well other chemicals that pose a risk in their emergency response plan. As previously noted, another agency is sometimes delegated by the state to be directly involved in emergency response planning and preparedness. In both instances, state delegated agencies are connected to the local response and planning framework. The information required to be shared in this rulemaking is largely consistent with the information required by the Order.

F. Security and Confidentiality for HHFT Information Sharing Notification

In response to the Order's information-sharing provisions, railroads raised particular concerns that the sharing of routing information for HHFTs required them to reveal proprietary business information. The railroads argued that the routing information, if published or shared widely, could reveal information about customers. After considering the claim in an October 2014 information collection notice, FRA concluded that the information would not constitute business confidential or proprietary under federal law. See the discussion of AAR and ASLRRA's concerns published at 79 FR 59891 on October 3, 2014 (FRA's "Proposed Agency Information Collection Activities; Notice and Request for Comments" related to the Order). In its discussion, the FRA noted that the railroads did not specifically identify any prospective harm caused by the sharing of this information. Nonetheless, if a railroad claims that routing information contains confidential business information, the merits of that claim would be analyzed under state open records and sunshine laws.

Section 7302 of the FAST Act directs the Secretary to "establish security and confidentiality protections, including protections from the public release of proprietary information or security-sensitive information, to prevent the release to unauthorized persons any electronic train consist information or advanced notification or information provided by Class I railroads under this section." In fact, railroads previously raised concerns that the sharing of routing information for HHFTs required them to reveal proprietary business information. As discussed above, railroads argued that the Emergency Order routing information, if published or shared widely, could reveal information about customers. After considering the claim in an October 2014 information collection notice, FRA concluded that the information would not be considered business confidential or SSI under federal law. See the discussion of AAR and ASLRRA's concerns published at 79 FR 59891 on October 3, 2014 (FRA's "Proposed Agency Information Collection Activities; Notice and Request for Comments" related to the Order). In its discussion, the FRA noted that the railroads did not specifically identify any prospective harm caused by the sharing of this information. DOT's previous analysis and conclusion determined that the information shared by railroads does not qualify for withholding under federal standards on business confidential or SSI. As proposed, DOT will require railroads to share aggregated information about the volumes of crude oil that travel through a jurisdiction on a weekly basis. This information does not include customer information or other business identifying details. Further, it does not provide specifics about the timing of HHFT trains. Accordingly, PHMSA believes it is limited in its ability to establish security and confidentiality protections, particularly in light of the FAST Act's dual mandates for PHMSA to ensure free-flowing information to SERCs and first responders and provide protections for further disclosures. However, as noted in FRA's discussion of this matter in its October 2014 Information Disclosure Notice, State laws control, and may limit, the disclosure and dissemination of this information. Accordingly, PHMSA added the following language to the notification requirements: "If the disclosure includes information that railroads believe is security sensitive or proprietary and exempt from public disclosure, the railroads should indicate that in the notification." This will help guard against inadvertent public disclosure by ensuring that the information that railroads believe to be business confidential is marked appropriately. Before fulfilling a request for information and releasing the information, States will be on notice of which information the railroads consider to be inappropriate for public release. We welcome comments on this discussion and particularly invite comments on means by which PHMSA can fulfill the FAST Act's direction to establish security and confidentiality protections, where this information is not subject to security and confidentiality protections under Federal standards.

G. Initial Boiling Point Test

An offeror's responsibility to classify and describe a hazardous material is a key requirement under the HMR. In accordance with § 173.22 of the HMR, it is the offeror's responsibility to properly "class and describe a hazardous material in accordance with parts 172 and 173 of the HMR." For transportation purposes, classification is ensuring the proper hazard class, packing group, and shipping name are assigned to a particular material. For a Class 3 Flammable liquid, the HMR provide two tests to determine PG. Both the flash point and IBP must be determined to properly classify and assign an appropriate packing group for a Class 3 Flammable liquid in accordance with §§ 173.120 and 173.121. The HMR authorize all of the following IBP tests for classification of flammable liquids:

- ASTM D–86—Distillation of Petroleum Products at Atmospheric Pressure
- ASTM D–1078—Standard Test Method for Distillation Range of Volatile, Organic Liquids
- ISO 3405—Petroleum Products—Determination of Distillation Characteristics at Atmospheric Pressure
- ISO 3924—Petroleum Products—Determination of Boiling Range Distribution—Gas Chromatography Method
- ISO 4626—Volatile Organic Liquids—Determination of Boiling Range of Organic Solvents Used as Raw Materials

Table 8 provides a description of the flash point tests currently authorized in the HMR for petroleum liquids.

TABLE 8—FLASH POINT TESTING REQUIREMENTS FOR PETROLEUM LIQUIDS CURRENTLY IN THE HMR

Material	Flash point test
Homogeneous, single-phase liquid having a viscosity less than 45 S.U.S. at 38 °C (100 °F).	ASTM D–56—Standard Method of Test for Flash Point by Tag Closed Cup Tester. ASTM D–3278—Standard Test Methods for Flash Point by Small Scale Closed-Cup Apparatus. ASTM D–3828—Standard Test Methods for Flash Point by Small Scale Closed Tester.
All other liquids	ASTM D–93—Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester. ASTM D–3278—Standard Test Methods for Flash Point of Liquids by Small Scale Closed-Cup Apparatus.
For mixtures	Method specified in § 173.120(c)(2).

In 2014, the rail and oil industry, along with PHMSA's input, developed an RP designed to improve rail safety through the proper classification of crude oil and loading practices. This effort was led by API and resulted in the development of an ANSI-recognized recommended practice (see ANSI/API RP 3000, "Classifying and Loading of Crude Oil into Rail Tank Cars"). This recommended practice, which, during its development, went through a public comment period in order to be designated as an American National Standard, addresses the proper classification of crude oil for rail transportation and the quantity measurement for overfill prevention when loading crude oil into rail tank cars. The API RP 3000 provides guidance on the material characterization, transport classification, and quantity measurement for overfill prevention of petroleum crude oil for the loading of rail tank cars.

The API RP 3000 provides best practices for both sampling and testing. The API RP 3000 best practices for flash point testing align with the flash point test options currently in the HMR. For the initial boiling point test, the API RP 3000 concluded that for crude oils containing volatile, low molecular weight components (*e.g.* methane), the recommended best practice is to test using ASTM D7900. This test ensures a minimal loss of light ends because it determines the boiling range distribution from methane through n-nonane with an IBP defined as the temperature at which 0.5 weight percent loss is observed when determining the boiling range distribution defined in ASTM D7169. This test differs from the boiling point test options currently in the HMR, which do not remove and recover the light ends. The development of this recommended practice demonstrates the importance of proper classification.

In the May 8, 2015, Final Rule HM–251(80 FR 26644), PHMSA adopted requirements for a sampling and testing program. The API RP 3000 was finalized in September 2014, after the HM–251 NPRM was published, and the public was unable to have the opportunity comment on the API RP 3000's incorporation into the HMR. Therefore, PHMSA did not incorporate API RP 3000 by reference; however, we noted that it could be used as a method to comply with certain requirements the testing and sampling program. The sampling requirements adopted in

§ 173.41 of the HMR are consistent with API RP 3000, but provide greater flexibility. PHMSA stated that:

> shippers may still use API RP 3000 as a voluntary way to comply with the newly adopted sampling requirements. It should be noted that all of the testing provisions of API RP 3000 do not align with the requirements in the HMR. As the testing provisions were not proposed to be modified, shippers must continue to use the testing methods for classification of flammable liquids outlined in § 173.120 and flammable gases in § 173.115.

PHMSA further noted that we might consider the adoption of the non-codified testing provisions of API RP 3000, such as the ASTM D7900 boiling point test in a future rulemaking.

As specified in the final rule, the ASTM D7900 IBP test and practice recommended by industry in the API RP 3000 is not currently aligned with the testing requirements authorized in the HMR, forcing shippers to continue to use the testing methods authorized in § 173.121(a)(2). This misalignment results in a situation where an industry best practice for the testing of crude oil (ASTM D7900 for initial boiling point) that was developed in concert with PHMSA is not authorized by the HMR. Therefore, for initial boiling point determination, PHMSA is proposing to incorporate ASTM D7900 by reference, thus permitting the industry best practice for testing Class 3 PG assignments. We note that the incorporation of ASTM D7900, which aligns with the API RP 3000 will not replace the currently authorized testing methods; rather, it serves as a testing alternative if one chooses to use that method. PHMSA believes this provides flexibility and promotes enhanced safety in transport through accurate PG assignment.

III. Recent Spill Events

PHMSA collected and reviewed information from various sources pertaining to recent derailments involving discharges of crude oil. In this rulemaking and the accompanying analysis, PHMSA has focused on the following derailments: Watertown, WI (November 2015); Culbertson, MT (July 2015); Heimdal, ND (May 2015); Galena, IL (March 2015); Mt. Carbon, WV (February 2015); La Salle, CO (May 2014); Lynchburg, VA (April 2014); Vandergrift, PA (February 2014); New Augusta, MS (January 2014); Casselton, ND (December 2013); Aliceville, AL (November 2013); and Parkers Prairie, MN (March 2013). In the RIA, PHMSA provides narratives and discussion of the circumstances and consequences of these derailments. PHMSA has identified these derailments as involving trains transporting 20 or more tank cars of petroleum oil in a continuous block or 35 or more tank cars dispersed throughout the train in conformance with the proposed applicability of this rule. Furthermore, these derailments resulted in discharges of petroleum oil that harmed or posed a threat of harm to the nation's waterways or the environment.

By reviewing and analyzing the experience of the response to these derailments, PHMSA seeks to identify oil spill response challenges that have occurred in the past and could occur in future derailment scenarios. PHMSA incorporates this understanding of response challenges into this NPRM, which proposes to amend the requirements of 49 CFR part 130 to improve comprehensive oil spill response plans by way of new and revised requirements. PHMSA holds that improved oil spill response planning will, in turn, improve the actual response to future derailments involving petroleum oil and lessen potential negative impacts to the environment and communities.

In general, there have been a variety of challenges apparent in the responses to recent derailments involving petroleum oil. In multiple instances, those responding to oil spills have encountered difficulties in assessing the extent of oil spills due to smoke or fire. In several of the derailments discussed in this rulemaking, the relatively remote location of the town or derailment site limited responders' access to the derailment site and encumbered the deployment of response equipment (*e.g.,* heavy machinery) at the site. Response providers have also faced adverse weather or the potential for adverse weather, which can complicate response protocols and compound the adverse effects of spills. Communications between railroads, response providers, and Federal, State, and local officials are often challenging due to the broad array of organizational representation at derailment sites and the lack of formal response communications protocols. Further, derailments involving energetic ruptures and fires can threaten public safety, necessitating evacuations that span multiple days and require significant resources, including personnel and leadership with experience and training in emergency management.

Derailments often require a significant, long-term commitment of personnel and equipment to remediate an oil spill. Moreover, derailments involving petroleum oil typically require diverse technical or scientific response services. For example, monitoring a direct discharge into a waterway requires water sampling services to detect if harmful levels of compounds found in petroleum oils have contaminated affected waterways. Depending on the proximity of an oil spill to rivers, the spill response could also require monitoring of river levels, since rising river levels could rapidly exacerbate the extent of an oil spill. The smoke emanating from fires requires air monitoring services to detect if harmful levels of air pollutants have jeopardized local air quality and public health.

Thus, in the draft RIA, PHMSA has identified and summarized several recent derailments to illustrate the circumstances and consequences of derailments involving petroleum oil transported in higher-risk train configurations. We have outlined some of the challenges faced by the response to each spill event and discussed ways in which comprehensive oil spill response plans may have improved spill response efforts and/or alleviated the adverse consequences to the nation's waterways or environment.

IV. National Transportation Safety Board Safety Recommendations

As previously discussed, in addition to the efforts of PHMSA and FRA, the NTSB has taken a very active role in identifying the risks posed by the transportation of large quantities of flammable liquids by rail, as well as emergency response activities. Table 9 provides a summary of the rail-related NTSB Safety Recommendations related to this rulemaking.

TABLE 9—NTSB RECOMMENDATIONS ADDRESSED IN THIS RULEMAKING

NTSB recommendation	Summary	Addressed in this rule?	Description
R–14–02—Issued January 23, 2014.	Recommends that FRA develop a program to audit response plans for rail carriers of petroleum products to ensure that adequate provisions are in place to respond to and remove a worst-case discharge to the maximum extent practicable and to mitigate or prevent a substantial threat of a worst-case discharge.	Yes	Propose requirements for FRA to approve comprehensive oil spill response plans for rail.
R–14–05—Issued January 23, 2014.	Recommends that PHMSA revise the spill response planning thresholds contained in 49 CFR part 130 to require comprehensive response plans to effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and petroleum products.	Yes	Propose to revise the spill planning thresholds to address 20 cars of liquid petroleum oil in a continuous block or 35 cars of liquid petroleum oil in a consist.
R–14–14—Issued August 22, 2014.	Recommends that PHMSA require railroads transporting hazardous materials through communities to provide emergency responders and local and state emergency planning committees with current commodity flow data and assist with the development of emergency operations and response plans.	Yes	The proposed information sharing requirements in this rulemaking and the adopted routing requirements in final rule HM–251 (80 FR 26643, May 8, 2015) address this recommendation.

V. Summary and Discussion of Public Comments on Oil Spill Response Plans

A. Overview of Comprehensive Oil Spill Response Plans

In the August 1, 2014, ANPRM, PHMSA solicited public comment on questions about potential revisions to its regulations that would expand the applicability of comprehensive oil spill response plans (OSRPs) to high-hazard flammable trains (HHFTs) based on amounts of crude oil in an entire train consist, rather than a single package or tank car. PHMSA received 259 submissions representing more than 70,000 signatories. Over 67,000 signatories included comments directly addressing the ANPRM rulemaking that were submitted to a related docket for the NPRM HM–251, Hazardous Materials: Rail Petitions and Recommendations to Improve the Safety of Railroad Tank Car Transportation (RRR). These comments were identified and considered to the extent practicable. Comments were received from a broad array of stakeholders, including trade organizations, intermodal carriers, consultants, environmental groups, emergency response organizations, other non-government or advocacy organizations, local government organizations or representatives, tribal governments, state governments, Members of Congress, and other interested members of the public. Comments and all corresponding rulemaking materials received may be viewed on the *www.regulations.gov* Web site (Docket ID: PHMSA–2014–0105). Additional comments may be viewed under Docket ID: PHMSA–2012–0082.

In general, comments on the ANPRM were: (1) General statements of support or opposition; (2) personal anecdotes or general statements not specifically related to the proposed changes; (3) comments beyond the scope of the oil spill response planning provisions of the CWA; or (4) identical or nearly identical letter write-in campaigns submitted as part of comment initiatives sponsored by organizations. For example, many commenters recommend insurance or liability requirements for railroads that are not within the scope of PHMSA's statutory authority. Although PHMSA does not have statutory authority to impose insurance or liability requirements, the FAST Act mandates the Secretary initiate a study on the levels and structure of insurance for railroad carriers transporting hazmat under § 7310. That action is underway. The remaining comments reflect a wide variety of differing views on the proposed regulations. The substantive comments received on the ANPRM are organized by topic and discussed in the appropriate section, together with the PHMSA's response to those comments.

TABLE 10—OVERALL COMMENTER BREAKDOWN [38]

Background	Signatories	Description and examples
Non-Government Organization	65,044	Environmental groups, emergency response organizations, and other non-governmental organizations.
Government	3,299	Local, state, tribal governments or representatives, U.S. Congress members, etc.
Individual	2,079	Public submissions not directly representing a specific organization.
Industry Stakeholder	30	Trade organizations, intermodal carriers, offerors.

B. Plan Scope/Threshold of Comprehensive Oil Spill Response Plans

In order to inquire about the potential impact of different thresholds on the regulated community, PHMSA asked the public to comment on the following question: "When considering appropriate thresholds for comprehensive OSRPs, which of the following thresholds would be most appropriate and provide the greatest potential for increased safety? The following thresholds were provided as examples: (a) 1,000,000 gallons or more of crude oil per train consist; (b) an HHFT of 20 or more carloads of crude oil per train consist; (c) 42,000 gallons of crude oil per train consist; or (d) another threshold. In addition, PHMSA asked: What thresholds would be most cost-effective?''

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[38] It should be noted that individuals and non-government organization signatories were not categorized consistently due to limitations from transferring capturing comments initially submitted to PHMSA–2012–0082.

Comments to the ANPRM on the scope of the rule were wide-ranging. Many commenters commented on this question directly, voicing support of one or more of the proposed thresholds or suggesting a different threshold, while other commenters chose to comment generally.

The first threshold, (a) 1,000,000 gallons or more of crude oil per train consist was not supported by any commenters as a single metric. Two commenters: The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) did incorporate 1,000,000 gallons as part of another threshold, as discussed further below.

In opposition to the first proposed threshold, many commenters have suggested that the 1,000,000 gallons threshold is not effective because oil spills involving quantities below this threshold could cause considerable harm to the environment and in particular, rivers or waterways. On this point, LRT-Done Right has reiterated the significance of PHMSA's derailment data, stating that ''. . . less than one carload of spilled oil or ethanol can present great danger.'' Similarly, the Delaware Riverkeeper Network commented that, for example, ''a spill of 25,000 gallons of oil in Wyoming . . . resulted in a three mile trail of contamination.''

Commenters have also suggested that 1,000,000 gallons is not an adequate threshold because preventing oil spills within the context of rail transport differs substantially from the context of fixed oil facilities. The Delaware Riverkeeper Network has stated, ''A threshold of 1,000,000 gallons is . . . inappropriate because the current 1,000,000 gallon threshold [under EPA regulations] applies to stationary facilities and includes all oil containers, including drums, at the facility. Trains carrying volatile crude oil are substantially different than such facilities.'' Similarly, the Center for Biological Diversity has said, ''[42,000 gallons as a threshold for rail] would be more consistent with established law than a 1,000,000 gallon threshold . . . since trains are not storing oil in a controlled facility, but rather moving it around the country on rail systems that experience fatigue and unforeseen circumstances such as derailments.''

PHMSA's second proposed threshold, (b) an HHFT of 20 or more carloads of crude oil per train consist, was supported at least in part by three commenters.[39] Namely, the Independent Fuel Terminal Operators Association, the Flathead Lakers, and the Honorable Paul D. Tonko submitted comments in support of a threshold aligned with the definition of an HHFT. The Flathead Lakers, in particular, have noted that incidents involving quantities carried by HHFTs could be catastrophic.

In opposition to a threshold based on the HHFT definition, and similar to commenters' opposition to the first threshold of 1,000,000 gallons, some commenters have indicated that incidents need not involve an HHFT in order to cause considerable harm to the environment. The National Association of SARA Title III Program Officials (NASTTPO) and the Oklahoma Hazardous Materials Emergency Response Commission (OHMERC) have suggested that the threshold for developing a comprehensive oil spill response plan should involve fewer tank cars carrying crude oil because one tank car ''is more than enough flammable material to present a risk to first responders and the local community.'' Various individual commenters have echoed this sentiment and suggested that a threshold based on the HHFT definition would allow significant quantities of crude oil to be transported by rail carriers that lack comprehensive oil spill response plans.

Several commenters supported the third proposed threshold: (d) 42,000 gallons of crude oil per train consist. Commenters have shown that it is at least numerically consistent with current regulations in 49 CFR part 130, even though there is a key distinction in which part 130 upholds a threshold of 42,000 gallons for a single package (*i.e.*, a single tank car) and the ANPRM has proposed 42,000 gallons as a threshold within a single train consist. As the New York State Department of Transportation has stated, ''[A 42,000 gallon per train consist threshold] would maintain consistency with the existing threshold for comprehensive Oil Spill Response Plans (OSRP) while recognizing the hazard posed by the derailment of even a small number of crude oil cars.''

Many commenters have supported the third proposed threshold (*i.e.*, (d) 42,000 gallons of crude oil per train consist) on the basis that it was the lowest quantity threshold that PHMSA proposed. Given that approximately 30,000 gallons can be carried in a single tank car, 42,000 gallons amounts to the quantity of crude oil that could be contained and transported in two tank cars. Therefore, among the proposed thresholds, the 42,000 gallons per train consist threshold would plausibly have a high applicability and require the development of a comprehensive plan by the greatest number of railroads. Thus, commenters supporting this threshold have held that it would plausibly result in the greatest amount of prevention and preparation on the part of affected entities and consequently, the greatest amount of risk reduction, enhancement of public safety, and protection of the environment.

Similarly, the threshold of 42,000 gallons received some support from commenters that propose lower quantities of crude oil as a threshold (*e.g.*, 1 gallon, 24,000 gallons, 30,000 gallons, etc.), but acknowledged that a threshold of 42,000 gallons for practical purposes would result in approximately the same amount of applicability and affected entities. Assuming the typical tank car contains 27,000 to 30,000 gallons of crude oil, the main difference between a threshold of 1 gallon and 42,000 gallons would be whether a railroad could legally transport one tank car of crude oil without a comprehensive oil spill response plan. Accordingly, the Delaware Bay & River Cooperative has commented, ''. . . one rail car of 30,000 gallons of crude can have significant environmental impacts if spilled in a sensitive area along the Delaware River or other body of water. Therefore, 42,000 gallons may be the appropriate threshold level to trigger the comprehensive plans requirement.''

Nevertheless, some commenters have suggested that the threshold should be one tank car or any quantity of crude oil. The Waterkeeper Alliance has stated, ''Whether one car, twenty cars, or one hundred and twenty cars in a train are carrying crude oil, crude-by-rail is inherently dangerous, and PHMSA should require the railroad industry to adequately prepare for any size spill. In sum, the new PHMSA Response Rule must set the comprehensive oil spill response planning threshold at one railcar.'' Thus, commenters in support of a threshold of one tank car or any quantity of crude oil hold that even the transport of small amounts of crude oil entail substantial risk and should necessitate a comprehensive oil spill response plan, rather than a basic plan.

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[39] It should be noted that the HMR now define an HHFT as ''as a train comprised of 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or 35 or more loaded tank cars of a Class 3 flammable liquid across the entire train.'' The (b) threshold was based on the HHFT definition proposed in the August 1, 2014 NPRM which was ''as a train comprised of 20 or more tank cars containing a flammable liquid.''

In the ANPRM, PHMSA encouraged commenters to provide additional thresholds differing from those that PHMSA explicitly proposed. According to AAR and ASLRRA, the scope of the rule should involve a threshold based on "Petroleum Crude Oil Routes" (PCORs). AAR and ASLRRA define PCORs as ". . . a railroad line where there is a minimum of twelve trains a year, which is an average of one train a month, that transport 1,000,000 gallons of petroleum crude oil (UN1267 and/or UN3494) or more that is within 800 feet or closer from the centerline of track to a river or waterway that is used for interstate transportation and commerce for more than 10 miles." Assuming each tank car has a capacity of 30,000 gallons, the transport of 1,000,000 gallons of crude oil would require around 33 tank cars.

The AAR and the ASLRRA also proposed geographical criteria as part of their PCOR definition, differing from PHMSA's proposed thresholds, which are based on a quantity transported or number of carloads within a train consist. As part of its geographical criteria, the AAR suggests that a PCOR must be within 800 feet of a river or waterway used for interstate transportation and commerce for more than 10 miles. The AAR claims that the 800 feet figure is based on a railroad's experience following a discharge. The AAR does not give further details on how the 800 feet figure was developed. The AAR also claims that the 10 miles figure used in its PCOR definition is based on regulations within 49 CFR part 194, which are applicable to oil pipeline owners and operators and are overseen by PHMSA's Office of Pipeline Safety (OPS). Discussion of this claim can be found in the "Discussion of Public Comments: Plan Scope/Threshold" section.

In addition, the AAR has limited the scope of its proposed threshold to include only those railroad lines that move at least twelve trains a year, an average of one train per month. The AAR did not include any data to support incorporating the parameter of twelve trains per year into the NPRM's thresholds or to show that the use of the PCOR definition as a threshold would improve safety or be cost-effective.

Many other commenters proposed alternative thresholds, such as five carloads or 3,500 gallons per tank car. In support of a five carload threshold, NASTTPO has stated that "it is common for more than one HHFT tank car to be involved [in a derailment]." In support of a 3,500 gallons per tank car threshold, commenters, such as safety consultant John Joeckel, have suggested that the current, 3,500-gallon threshold in 49 CFR part 130 for basic oil spill response plans could become the new threshold that triggers the need to develop a comprehensive plan. These commenters reiterate that the current regulations for comprehensive plans under 49 CFR 130 do not generally apply to railroads given that tank cars used to ship crude oil do not have capacities of 42,000 gallons or greater. They suggest that PHMSA could remove part 130's reference to a basic plan and repurpose the 3,500 gallon per packaging threshold so that it would trigger the need for a comprehensive plan.

In addition, some commenters restated the need to revise the thresholds in 49 CFR part 130 and suggested that they align with probable spill volumes or other planning volumes found in other federal regulations (*e.g.,* "average most probable" or "maximum most probable"). In particular, the Response Group has stated that the threshold should relate to probable spill volumes and historical data but did not specifically propose as a threshold a numerical value.

Similarly, the American Petroleum Institute (API) did not express support for PHMSA's proposed thresholds nor did API specifically propose a new threshold. However, API emphasized that "DOT should choose a threshold that is reasonable and practical . . . Onerous planning requirements with an extremely low threshold could exponentially increase the cost and burden on the railroads, while vague planning requirements triggered by a baseless threshold would be equally challenging." Thus, API has expressed that the cost to railroads in developing and implementing comprehensive plans could be substantial, and PHMSA should consider and analyze the costs of applying different thresholds.

In addition to API's above comment, PHMSA received additional commenter input on the cost-effectiveness of the proposed thresholds. Environmental groups and others have expressed that cost concerns should be secondary to concerns about the potential benefits of enhancing public safety and reducing damage to the environment. For example, the Center for Biological Diversity has stated that the cost-effectiveness of thresholds ". . . is somewhat immaterial, and cost should not be considered in establishing a threshold for comprehensive OSRPs for oil trains, since this is an issue of public health." Safety consultant John Joeckel has offered a similar comment, stating, "Are we concerned with the cost to the responsible party to develop and implement the OSRP? Or, should we be concerned of the cost to the public arising from an ineffective response with the consequences of significant environmental damage or risks to public safety?"

Many commenters have suggested that the scope of this rule be expanded to include other materials besides oil. Commenters have asked PHMSA to require comprehensive oil spill response plans for rail cars transporting any type of hazardous materials. The Village of Barrington, IL and the TRAC Coalition, in particular, have stated, "Given the clear authority that PHMSA has to issue regulations under federal law for a broad range of hazardous goods, TRAC strongly believes the rules being promulgated under this ANPRM should be applied to all hazmat transported on trains." This commenter has cited the Cherry Valley, IL ethanol train derailment to show that, "While the ANPRM is about oil spill response plans, clearly other hazardous material poses similar threats to human and environmental safety." Other commenters, such as LRT-Done Right, have stated that carriers of ethanol should also be subject to comprehensive OSRP requirements.

Conversely, other commenters have suggested that the scope of the rule be limited in order to more specifically address the risks of petroleum crude oil transport. "Petroleum crude oil" (UN1267) is a specific entry in the Hazardous Materials Table (HMT) under 49 CFR 172.101. "Petroleum sour crude oil, flammable, toxic" (UN3494) is a similar entry. On this basis, AAR has asked that the scope of the rule be limited explicitly to these entries in the HMT. The Dangerous Goods Advisory Council (DGAC) has offered an analogous suggestion, stating, "[DGAC] believe[s] that the OPRP [sic] should be limited to crude oil trains only which are comprised of tank cars originating from one consignee to one consignor." In other words, by limiting the scope of the rule to "crude oil" or "petroleum crude oil" only, commenters are suggesting that the transport of refined petroleum products, ethanol, or other flammable liquids should not be relevant to the determination of whether a rail carrier must have a comprehensive OSRP.

Discussion of Comments: Plan Scope/Threshold

PHMSA carefully considered the comments submitted to the ANPRM regarding the scope of the rule in order to apply comprehensive OSRP requirements to address the increased risks posed by the expansion of domestic energy production and subsequent rail transportation. PHMSA recognizes the importance of establishing a threshold that enhances public safety, protects the environment, is reasonable and practical, and facilitates compliance and enforcement. PHMSA acknowledges that an effective threshold will take into account a range of factors, and might include distinctions regarding the quantity of petroleum oil transported, the number of carloads within a train consist, the definition of different materials subject to regulation, geographic or location-based criteria, and cost/benefit or practical considerations.

PHMSA emphasizes that safety and environmental risks are related to the quantity of oil transported by trains, and the configuration of tank cars loaded with petroleum oil. Thus, PHMSA has proposed in this NPRM to expand applicability for petroleum oil based on the number and configuration of tank cars transporting petroleum oil in a train. Specifically, this rulemaking proposes that comprehensive oil spill response plans be required of railroads that transport 20 or more tank cars loaded with liquid petroleum oil in a continuous block in a single train or 35 or more of such tank cars dispersed throughout the train. We propose the comprehensive OSRP requirements continue to apply to tank cars exceeding 42,000 gallons carrying petroleum or other non-petroleum oil. In this NPRM, we discuss our basis for this proposed applicability, as well as how it may differ from commenters' suggestions or proposals.

The scope of this rule is directly related to the definition of oil because the statutory authority to require OSRPs comes from § 1321 of the CWA, as amended by OPA, which applies solely to oil and hazardous substances. The CWA applies to both petroleum and non-petroleum oils. In the 1996 final rule, PHMSA incorporated the definition of "oil" from OPA into the current requirements 49 CFR part 130 and developed definitions for "petroleum oil" and "other non-petroleum oil" in order to differentiate petroleum oils from non-petroleum oils throughout the requirements in part 130.

This rulemaking has been initiated to respond to the changing conditions from the increase in the volume of petroleum oil transported by rail and consequences of resulting incidents. PHMSA is not aware of incidents of unit trains carrying other non-petroleum oils which have demonstrated a need to expand the applicability of comprehensive plans for these oils. Therefore, instead of proposing that the expanded applicability of the comprehensive plan apply to all oils (as defined in 33 U.S.C. 1321), PHMSA proposes to limit the proposed expanded applicability to petroleum oils, whether refined or unrefined, transported in certain train configurations. PHMSA proposes to continue to apply the threshold of tank cars exceeding 42,000 gallons carrying petroleum or other non-petroleum oil.

Further, we propose to revise the definition of "petroleum oil" in this rulemaking as "any oil extracted or derived from geological hydrocarbon deposits, including oils produced by distillation or their refined products." This definition continues to include mixtures of both refined products, such as gasoline and unrefined products, such as petroleum crude oil. We are not proposing any changes to the scope in § 130.2(c)(1) which clarifies that the requirements of part 130 do not apply to "Any mixture or solution in which oil is in a concentration by weight of less than 10 percent." Therefore petroleum oil in part 130 includes mixtures containing at least 10% petroleum oil, such as denatured ethanol fuel E85 (ethanol containing 15% gasoline). However, mixtures containing less than 10% petroleum oil, such as diluted waste water or E95 (ethanol with 5% gasoline) are not included. Oils which do not contain petroleum, such as synthetic oils or essential oils continue to be defined as "other non-petroleum oil" in § 130.5.

PHMSA disagrees with AAR that the applicability of the comprehensive plans should be limited to petroleum crude oil, as described by HMT entries UN 1267 and UN3494. Limiting the applicability of comprehensive plans to solely these entries would result in regulating oils that generally present a similar type of risk in an incongruous manner. On this point, PHMSA holds that liquid petroleum oils, such as crude oil, diesel fuel, gasoline, or other petroleum distillates, present similar safety risks in commercial transportation.

There are several factors to consider when determining which hazardous materials should be subject to the new or revised requirements of this proposed rule. In general, PHMSA assesses the risks of hazardous materials in transportation in accordance with the nine different hazard classes under the HMR; however, the regulations we seek to amend in 49 CFR part 130 are not part of the HMR. Namely, part 130 is authorized under 33 U.S.C. 1321—Oil and hazardous substance liability, not the Federal hazardous materials transportation law of 49 U.S.C. 5101–5128.

Moreover, the proposed applicability in this NPRM generally aligns with the definition of a "High-Hazard Flammable Train" (HHFT) as published in the final rule, "Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains" ("HM–251"). The proposed applicability differs, however, in the types of materials affected. By way of HM–251, the definition of an HHFT involved the transport of all Class 3 flammable liquids; whereas the comprehensive OSRP requirements in this rulemaking involve the transport of petroleum oil for consistency with part 130's statutory authority. Therefore, the proposed expanded applicability applies to those HHFTs which carry petroleum oil. This creates an integrated approach between the planning requirements in this rulemaking and the other operational controls in the HMR. To better facilitate this integration, residue or diluted mixtures of petroleum oils that no longer meet the definition of a Class 3 flammable or combustible liquid per 49 CFR 173.120 are not included in expanded applicability.

In the ANPRM, PHMSA asked if the 1,000,000 gallons threshold is appropriate for safety and cost-effectiveness. No commenters supported using 1,000,000 gallons as a single metric for applicability. Many commenters have suggested that the 1,000,000 gallons threshold is not effective because oil spills involving trains with quantities below this threshold could cause substantial harm to the environment. While commenters provided many examples of thresholds below 1,000,000 gallons, commenters provided insufficient data about the likelihood of a release from these tank car volumes to demonstrate such thresholds are "reasonably expected" to cause substantial harm. Thus, in order to better understand this differential of risk and the most likely number of punctures resulting in a derailment, PHMSA looks to the modeling conducted by FRA in support of HM–251.[40] In particular, HM–251 offered a scientific justification for the HHFT definition and using this threshold of tank cars as an identifier of higher-risk train configurations. Based on modeling and analysis performed by FRA, 20 tank cars in a continuous block loaded with a flammable liquid and 35 tank cars loaded with a flammable liquid dispersed throughout a train display consistent characteristics as to the number of tank cars likely to be breached in a derailment. The operating railroads commented on HM–251 and indicated that this threshold would exclude "manifest" trains and focus on higher risk, "unit" trains. FRA completed an analysis of a hypothetical train set consisting of 100 cars. The analysis assumes 20 cars derailed. The highest probable number of cars losing containment in a derailment involving a train with a 20-car block (loaded with flammable liquid) located immediately after the locomotive and buffer cars would be 2.78 cars. In addition, the most probable number of cars losing containment in a derailment involving a manifest train consisting of 35 cars containing flammable liquids dispersed throughout the train would be 2.59 cars. Therefore, 20 tank cars in a block and 35 tank cars dispersed throughout a train display consistent characteristics (*i.e.,* 2.78 cars breached vs. 2.59 cars breached). If the number of flammable liquid cars in a manifest train were increased to 40 or 45, the most likely number of cars losing containment would be 3.12 and 3.46 cars, respectively. This analysis served as one basis for the selection of the revised HHFT definition for HM–251, and it also helps to shape our discussion of applicability in this proposed rule for oil spill response plans (HM–251B).

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[40] 80 FR 26665; 5/8/2015.

As a result of this modeling, PHMSA holds that a derailment involving a train moving less than 20 tank cars in a continuous block, or less than 35 tank cars throughout the train, would result in relatively fewer punctures than derailments involving more than this number of tank cars. Specifically, as a result of this modeling, PHMSA suggests that the most likely number of tank car punctures for a train with less than 20 tank cars in a block would be less than 2.78, and in a derailment scenario with less than this number of punctures, the derailment is significantly less likely to cause substantial harm to the environment. In more general terms, PHMSA would suggest, as a result of these modeling outcomes from FRA, that a derailment involving two or fewer tank car punctures is less likely, and therefore not "reasonably expected" to cause substantial harm to the environment. Therefore, we believe the applicability proposed in this NPRM appropriately indicates the trains that can reasonably be expected to cause substantial harm to the environment. Consequently, by way of this rulemaking, PHMSA proposes to require these higher-risk train configurations to operate in conformance with comprehensive oil spill response plans.

In addition to the data on the most likely number of tank car punctures in a derailment, PHMSA further maintains that lower-risk train configurations should not be the focus of this rulemaking because extending the requirements of this rule to operators of lower-risk configurations could be burdensome, costly, and inefficient. There are many costs involved in developing and implementing a comprehensive oil spill response plan, such as retainer fees, training and drill costs, and plan development and submission costs. For more information regarding regulatory flexibility, please see Section VIII, Subsection E ("Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures"). For more information regarding the costs of this rule on the regulated community, please see the draft RIA and the associated discussion in Section VIII, Subsection A ("Executive Order 12866, Executive Order 13563, Executive Order 13610, and DOT Regulatory Policies and Procedures").

Commenters have also suggested that 1,000,000 gallons, which is used as a threshold in the development of non-transportation-related facility response plans, is not an adequate threshold because the context of rail transport differs substantially from the context of fixed facilities. PHMSA agrees. PHMSA believes that a threshold based on a number of carloads is more effective and practical, and the proposed applicability in this rulemaking is specific to the context of rail transportation. Moreover, as previously discussed, the proposed applicability identifies higher-risk train configurations which could reasonably be expected to cause substantial harm to the environment in the event of a derailment.

A few commenters voiced support for the second threshold of the HM–251B ANPRM, which aligned with the HHFT definition proposed in the HM–251 NPRM and published on August 1, 2014 (*i.e.,* 20 tank cars in a train). Given the proposed applicability in this rulemaking, PHMSA generally agrees with these commenters; however, the nature of the HHFT definition has changed since HM–251B's ANPRM publication. On May 8, 2015, PHMSA published the final HM–251 and revised the HHFT definition to comprise 20 tank cars loaded with a Class 3 flammable liquid in a continuous block or 35 or more tank cars loaded with a Class 3 flammable liquid dispersed throughout the train. Thus, by way of HM–251, the HHFT definition came to reference the configuration of tank cars in the train as well as an additional threshold for the number of tank cars in a train. Furthermore, PHMSA has adapted the HHFT definition of HM–251 to form the basis for the applicability for comprehensive oil spill response plans, but notably restricts this applicability to liquid petroleum oils, rather than all Class 3 flammable liquids. For these reasons, PHMSA has not proposed to codify the HHFT definition under part 130.

Moreover, this applicability is important because it is likely that trains with less than 20 tank cars of petroleum oil in a continuous block, or less than 35 of such cars dispersed throughout the train, are the result of configuring "manifest" trains. Manifest trains involve combining multiple shipments of potentially various materials from various shippers to form a single train consist. These trains differ substantially from "unit" trains, which generally involve a single commodity offered by a single shipper (the consignor) and delivered to a single entity (the consignee). As discussed in the final rule document for HM–251, the rail industry has noted that manifest trains carrying limited loads of oil along with other commodities pose less of a risk than unit trains with significantly larger loads of oil. Further, the rail industry commented on the NPRM of HM–251, relaying that in many situations it would be difficult to pre-determine when an HHFT would be used and that shippers of smaller volumes of oil would not know if their shipment would ultimately be configured into an HHFT.

PHMSA carries these concerns and related analyses from HM–251 into this proposed rule, as we believe it is still pertinent to the discussion of comprehensive oil spill response plans. In this rulemaking, PHMSA intends to identify higher-risk train configurations that pose a threat of substantial harm to the environment. Conversely, PHMSA does not intend to affect lower-risk train configurations moving smaller quantities of petroleum oil, which are more likely to be the result of configuring a manifest train. Lower-risk train configurations are significantly less likely to cause substantial harm to the environment and extending the full breadth of the proposed requirements for a comprehensive plan to entities transporting lower-risk train configurations would likely be too burdensome and costly, for the limited safety benefits provided. Furthermore, the proposed quantity provides an integrated approach to the comprehensive OSRP requirements and the requirements of HHFTs.

In opposition to an HHFT-like applicability, many commenters have argued that oil spills involving carloads below this threshold could cause considerable harm to the environment. On this point, PHMSA acknowledges that oil spills of a lesser amount can cause harm, but holds that trains carrying less than 20 tank cars of petroleum oil in a continuous block, or less than 35 of such tank cars dispersed throughout the train, are effectively lower-risk train configurations, and they cannot be reasonably expected to cause substantial harm. In other words, these trains may be capable of causing harm, but the harm they can cause is significantly less likely to qualify as substantial harm. As previously discussed, modeling data from FRA indicates that trains with less than 20 tank cars in a block, or less than 35 tank cars dispersed throughout a train, could not be reasonably expected to cause substantial harm because, in derailment scenarios, relatively few tank cars containing petroleum oil would be breached on average. As previously discussed, this modeling demonstrated that the most likely number of punctures in a derailment scenario involving a train with 20 tank cars in a continuous block would be 2.78.

Furthermore, given the enhanced tank car standards promulgated in HM–251 and resulting improvements in tank car integrity, PHMSA believes the likelihood of a tank car releasing all of its contents in a derailment has been significantly reduced. Thus, in relation to the derailment modeling data (discussed above), PHMSA maintains that a train with a 20-car block of petroleum oil would not result in 83,400 gallons spilled (2.78 tank car punctures × 30,000 gallons per tank car = 83,400 gallons discharged from the breached tank cars). Rather, a derailment scenario involving 20 tank cars of petroleum oil in a continuous block would most likely result in less than 83,400 gallons discharged. For these reasons, PHMSA cautions against the assumption implicit in some commenters' comments that the derailment of one tank car automatically results in the discharge of 30,000 gallons of product, and the derailment of two tank cars is equivalent to the discharge of 60,000 gallons of product, and so forth. As the modeling data from FRA indicates, the number of tank cars that breach in a derailment scenario is in all likelihood fewer than the number of tank cars that derail. Separately, given the tank car design enhancements promulgated by HM–251, the likelihood that breached tank cars would release all of their contents has been reduced. Accordingly, PHMSA feels that extending the requirement to develop a comprehensive OSRP to entities operating lower-risk train configurations would not be efficient. It would require significant investments on the part of small entities that are not key factors in the transport of petroleum oil by rail, and these investments would not yield analogous safety benefits. Please see Section VIII, Subsection E ("Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures") for impacts on small entities and the draft RIA for further discussion of safety benefits and costs to industry.

Many commenters voiced support for the third threshold proposed in the ANPRM, which was 42,000 gallons. PHMSA disagrees with these comments because we believe that a threshold based on the number of carloads of petroleum oil in a train would be more practical for compliance and enforcement purposes than a threshold based on gallons. In general, 42,000 gallons as a threshold could be impractical or burdensome. Since tank cars tend to carry around 30,000 gallons of product, a threshold of 42,000 gallons would effectively equate to differentiating a train with one carload of petroleum oil and a train with two carloads and thus, requiring a comprehensive plan for the transport of two carloads of petroleum oil. As previously discussed, PHMSA affirms that higher risk train configurations should be the focus of the proposed rule and that a train transporting two tank cars of petroleum oil simply does not present the same amount of risk as higher-risk train configurations. While a train with two tank cars of petroleum oil could derail, potentially releasing its contents and harming the environment, it is not nearly as likely to cause substantial harm as higher-risk trains with much larger quantities of petroleum oil.

In the ANPRM, PHMSA asked the public if "another threshold" were appropriate or cost-effective. In response to PHMSA's inquiry of "another threshold," many commenters offered thresholds that are less than 42,000 gallons, such as one tank car, 24,000 gallons, 3,500 gallons, or any quantity of petroleum oil. PHMSA disagrees with these suggestions. Rail industry practices demonstrate that there is only a slight distinction between the threshold of 42,000 gallons, which was proposed by PHMSA in the ANPRM, and the lesser quantities proposed by some commenters in response to the ANPRM. In practical terms, the thresholds of any quantity, 3,500 gallons, and 24,000 gallons would result in regulating trains with one tank car of petroleum oil, whereas a 42,000-gallon threshold would result in regulating trains with two tank cars. PHMSA maintains that this distinction is slight and in either case, requiring comprehensive plans of trains that transport merely one or two tank cars of petroleum oil would most likely be burdensome upon implementation and be costly relative to the limited safety benefit it would offer, especially for small entities. As previously discussed, PHMSA also holds that a threshold based on a number of carloads is more practical than a threshold based on a gallon amount.

In a similar vein, PHMSA holds that imposing an applicability of five tank cars, or any other number of tank cars that is less than 20 in a continuous block or 35 when dispersed throughout a train, would most likely be costly or burdensome and yield limited safety benefits due to the impacts on small entities as well as "manifest" train configurations involving petroleum oil. Please see the draft RIA for further discussion of the costs and benefits of the proposed rule.

In response to the comment by AAR and ASLRRA, PHMSA disagrees with using the definition of a Petroleum Crude Oil Route (PCOR) of ". . . a railroad line where there is a minimum of twelve trains a year, which is an average of one train a month, that transport 1,000,000 gallons of petroleum crude oil (UN1267 and/or UN3494) or more that is within 800 feet or closer from the centerline of track to a river or waterway that is used for interstate transportation and commerce for more than 10 miles" to determine whether a rail carrier must develop a comprehensive plan. We do not have information on exactly how many rail carriers or trains would be permitted to transport petroleum oil without a comprehensive plan if the applicability of this rulemaking were to incorporate the AAR and ASLRAA's proposed PCOR definition or the quantity of 1,000,000 gallons, and invite public commenters to provide information to assist in further evaluating the benefits and costs of these alternative applicability thresholds. Overall, PHMSA believes that the PCOR definition is overly complicated, and creates uncertainty for FRA, communities, and responders about which unit trains of petroleum oil are excluded from the requirement to have a comprehensive plan. PHMSA seeks to align increased risk with improved oil spill response planning such that higher risk unit train configurations would require comprehensive plans. PHMSA suggests that AAR and ASLRRA's PCOR definition might permit an unwarranted number of trains which present the potential of substantial harm to the environment to operate without a comprehensive plan. Additional concerns with this definition are described in the following discussion.

Further, as previously discussed, PHMSA disagrees with the PCOR definition because PHMSA believes that using a gallons basis for the threshold could present compliance and enforcement issues, especially relative to the use of a number of tank cars. Since tank cars vary in the quantity of product that they can transport, PHMSA suggests it is much easier to determine the number of tank cars in a train carrying petroleum crude oil than it is to assess the exact amount of gallons carried by any number of tank cars designed with potentially different capacities. For example, a train carrying 35 tank cars of petroleum oil would likely be "around the margin" of 1,000,000 gallons of petroleum oil. In other words, accurately determining if the train as configured has 990,000 gallons of product, versus 1,000,000 gallons, might be difficult for compliance and enforcement purposes; whereas, it is easier to observe that the train as configured has 35 tank cars. While we proposed two thresholds based on gallon amounts in the ANPRM, we have since crafted our proposed threshold in the NPRM to reflect this updated viewpoint and analysis.

Moreover, PHMSA disagrees with the AAR's use of 800 feet as a geographic criterion in the PCOR definition because it might present compliance and enforcement issues. Assessing the need for a comprehensive plan or a potential violation would require a potentially taxing confirmation of the distance of a waterway from the centerline of the track, especially "around the margin" of 800 feet. In addition, this geographic criterion might result in different outcomes of response preparedness despite nearly identical levels of risk. For example, in a scenario wherein one waterway is 790 feet from the centerline of the track, and another scenario wherein a different waterway is 801 feet from the centerline of the track, the second waterway might be better protected from an oil spill than the first. Thus, the 800 feet geographic criterion appears to be arbitrary given that the commenter has not offered data to suggest that 800 feet would be an appropriate "buffer" zone between a potential derailment site and navigable water and as such, enhance safety and prevent the entry of oil into the waterway. Further, the distance between the centerline of the track and navigable water is but one of the several factors that could influence the probability of a spill damaging navigable water; that is, other geographical factors exist that might increase this probability substantially.

PHMSA also disagrees with AAR's contention that in order to trigger the response plan requirement, the waterway in question must be a maximum distance of 800 feet from the centerline of the tracks and the waterway must be "a river or waterway used for interstate transportation and commerce." Both the distance from and criteria for a waterway as proposed by AAR are inconsistent with the CWA, which provides the statutory authority for this rulemaking. For example, rather than a distance of "800 feet" from navigable waters, the CWA requires oil spill response plans for any facility that "because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone." PHMSA is not aware of evidence demonstrating that all spills originating more than 800 feet away from navigable waters could not be reasonably expected to cause substantial harm to these resources. PHMSA assumes that all routes are expected to have the potential to impact navigable waters and that performing an analysis for every point along the route is not practical, as there are various factors that could complicate this analysis and hinder the ability to foresee an impact to navigable waters. For example, identification of navigable waters requires consideration of geographical features, seasonal variation, vegetation, etc. The possible impact zone surrounding the track could also depend on topography or the viscosity of the petroleum product transported. Therefore, the entire route should be covered by the Oil Spill Response Plan and after a discharge of oil occurs, the Federal On-Scene Coordinator should make the determination of the threat in the specific conditions.

In addition, per AAR's PCOR definition, a track or segment of track over which only eleven crude oil-carrying trains travel per year would not require a comprehensive plan; however, if a twelfth train travels over this same segment or track, it would necessitate a comprehensive plan. Thus, PHMSA suggests that this aspect of the PCOR definition may be impractical for compliance and enforcement efforts. We anticipate that it would not be possible for a railroad to make an accurate, advance prediction of commodity flows and train consists, because that prediction would rely on external factors beyond the railroad's control. For example, commodity flows and train consists would be affected by fluctuations in oil or other commodity prices, decisions by customers to pursue different shipping routes, or overall economic factors.

However, PHMSA recognizes that AAR has proactively identified ways to target the affected entities that present higher safety risks while trying to limit the impact of the proposed rule and associated costs on entities that pose significantly less risk. To that end, PHMSA appreciates the attentiveness to providing regulatory flexibility and holds that it may be acceptable to except certain small entities from the proposed requirements of comprehensive oil spill response plans if they are overly costly or burdensome for these entities. For more information regarding regulatory flexibility, please see Section VIII, Subsection E ("Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures"). Moreover, PHMSA seeks comment on ways that might be used to effectively provide regulatory flexibility to bona fide small entities that pose a lesser safety risk and may not be able to comply with the requirements of the proposed rule due to cost concerns, limited benefit, or practical considerations.

C. Contents of Comprehensive Oil Spill Response Plans

Commenters submitted a variety of comments regarding plan contents to the ANPRM. In the ANPRM, PHMSA asked the public two questions that were specific to the area of plan contents. To paraphrase, the first question asked whether the current requirements for comprehensive OSRPs were "clear" or if greater specificity should be added to 49 CFR part 130 ("Part 130"). The second question asked if any comprehensive OSRP elements should be "added, removed, or modified."

Regarding the first question, the majority of commenters stated that they were not clear and needed greater specificity. For example, the Response Group has said that the current requirements under part 130 are "too generic in nature." In addition, API has stated, "The current PHMSA spill response plan requirements applicable to the railroads do not provide the clarity needed to develop comprehensive, responsive and consistent spill response plans . . . PHMSA should consider revising part 130 to provide better specificity to the regulated community and should look to EPA, USCG and BSEE for examples and practices that would work with the operational requirements of the railroads.'' Further, DGAC has stated that ''it would be advisable to develop training and outreach information'' to assist affected entities in the development of comprehensive OSRPs. Overall, commenters from a variety of backgrounds have asked PHMSA to clarify the current requirements under part 130, reference other agencies' plans (*e.g.*, plans under USCG, BSEE, EPA, or PHMSA's Office of Pipeline Safety), provide further instructions and guidance to affected entities, and ensure that new requirements reflect the context of rail transportation. Commenters such as California's Office of Spill Prevention Response and Washington State's Department of Ecology also highlighted the requirements aligned necessary to align with obligations in the CWA statute.

However, some commenters stated that the existing requirements are adequate as currently written. The New York State Department of Transportation has stated, ''The use of comprehensive OSRPs is not a new concept . . . New York State believes the requirements of OSRPs are clear enough for railroads and shippers to understand what is required of them.'' The American Fuel & Petrochemical Manufacturers (AFPM) has stated that the ''requirements of OSRPs in 49 CFR 130.31 provide sufficient clarity for the railroads to take steps to plan for and address potential discharges of crude oil. The focus of PHMSA's efforts should be . . . ensuring appropriate oversight and enforcement of existing spill planning obligations, including ensuring that railroads have available the equipment and personnel necessary to address discharges.'' Similarly, the City of Seattle claims that the current comprehensive OSRP requirements are clear for railroads and shippers, but states that the plan requirements are not clear to the public and ''do not properly engage the public.'' Regarding the City of Seattle's comment and public engagement, please refer to the summary and discussion of comments under Section V, Subsection E (''Confidentiality/Security Concerns for Comprehensive Oil Spill Response Plans'').

PHMSA also asked the public if any plan elements within part 130 should be added, removed, or modified. Several commenters identified plan elements that could be added, removed, or modified, and suggested different means of addressing: Adverse weather conditions; topological and geographic risks near rail routes; environmentally sensitive or significant areas; temporary storage of loaded rail cars; worst-case discharge planning; communication between Qualified Individuals and local, state, and federal officials; training standards; drills; equipment inspection; private and public resource contracting; response time requirements; timeframes for reviewing or updating OSRPs; public awareness; alternative plans; and NTSB safety recommendations, among other issues.

The Association of American Railroads (AAR) and American Short Line and Regional Railroad Association (ASLRRA), in particular, have made several suggestions regarding potential additions or modifications to part 130. AAR and ASLRRA have submitted ''proposed regulatory language'' for OSRPs. Within this language, they have suggested that rail carriers determine the worst-case discharge amount and provide their methodology within the OSRP. They have referenced National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and Area Contingency Plans (ACP) and provided a description of the requirements that a rail carrier must follow to be ''consistent'' with the NCP and each applicable ACP. In the same proposed language, AAR and ASLRRA have outlined the format of a possible comprehensive OSRP, which would include requirements for response resources, training, plan summaries and other administrative aspects of an OSRP. AAR and ASLRRA have also asked that an Integrated Contingency Plan (ICP) be acceptable if it ''provides equivalent or greater spill protection'' than the plan required under part 130. The joint comments also made suggestions related to recordkeeping, plan retention, periodic plan reviews, and submission/approval. For more information regarding the approval of plans, please refer to Section V, Subsection D (''Approval of Comprehensive Oil Spill Response Plans'').

The American Petroleum Institute (API) has suggested that comprehensive OSRP requirements be re-structured to be ''consistent and complementary with other legal spill prevention rules.'' API holds that comprehensive OSRP requirements could use a different format. In addition, API asks that DOT consider adopting the ''Response Zone'' concept that is currently utilized by pipeline operators. API also asks that DOT consider the public awareness programs under 49 CFR part 195 in which pipeline operators take part.

The Village of Barrington, Illinois and the TRAC Coalition have asked that comprehensive OSRP requirements enhance an ''ongoing partnership'' between railroads and local communities and include requirements for more effective communication between railroads and first responders. The commenter states that railroads must supply railroads with ''response information for the particular type of hazmat being transported'' and reiterates findings of an NTSB report suggesting a ''documented failure of the railroad to provide immediately the emergency response information and . . . shipping papers, in printed form or electronically, to the incident commander.'' The commenter also states that communities need to know ''where needed response assets are located.''

Safety consultant John Joeckel has offered several suggestions for modifying the current OSRP requirements. In general, this commenter has stated that OSRP requirements should be more ''prescriptive'' and ''specific'' and follow the example of other agencies' regulations (*e.g.*, 49 CFR part 194—Response Plans for On-shore Oil Pipelines; 33 CFR 155—Tank Vessel Response Plans, etc.). For example, Mr. Joeckel has said that comprehensive OSRPs should include: Planning standards to be used in determining potential worst-case discharges and ''response planning targets'' to specify the amount and types of response resources that would arrive at the scene of an incident within specific timeframes. He also suggests that current OSRP requirements include more specific instructions for communications between the Qualified Individual and local first responders, and that drills and exercises follow the guidelines within the National Preparedness Response and Exercise Program (NPREP). Mr. Joeckel offers several other areas in need of modifications or additions to part 130, such as training requirements, requirements for assurances of firefighting resources, development of response zone appendices, descriptions of the responsible parties within the response management system, and requirements to address environmentally and economically sensitive areas.

In a similar vein, the Center for Biological Diversity and partner commenters have asked that PHMSA include requirements for rail carriers to analyze environmentally-sensitive or significant areas, mitigate impacts to habitats and ecological services, and ''ensure that response actions do not harm endangered species.'' The Center for Biological Diversity has asked that OSRPs address consultations with the Fish and Wildlife Service as well as the National Marine Fisheries Service.

The Emmett Environmental Law and Policy Clinic of Harvard Law School, in collaboration with other environmental groups such as Sierra Club, have asked for certain modifications to comprehensive OSRP requirements. This commenter asks that the "range of oils carried by the railroad" be described in OSRPs, as well as the "variations in topographical and climatological conditions." Similar to the comment from the Center for Biological Diversity, the commenter also stipulates that plans "minimize the use of oil spill dispersants, whose effects in freshwater environments are not well understood."

Several other commenters have asked that comprehensive OSRP requirements be amended to address specific areas of environmental, cultural, or national significance. For example, the National Parks Conservation Association has recommended that "site-specific response plans" be required of HHFTs that passes through national park boundaries. The Flathead Basin Commission has relayed similar concerns regarding site-specific response plans. In addition, the Waterkeeper Alliance and partner commenters have stated that specific environmental areas and water resources are at risk of experiencing oil spills, such as the Spokane Valley, Columbia River, Puget Sound, Milwaukee River, Lake Ontario watershed, San Francisco Bay, and Hudson River, and suggested that OSRPs afford these areas consideration.

Washington State's Department of Ecology, Department of Fish and Wildlife, and Department of Natural Resources have proposed adding several plan elements. For example, they have proposed a "robust drills and exercise program" following the National Preparedness Response Exercise Program (NPREP). They have proposed standards for "oiled wildlife," response arrival times, and "Group 5 oils," as well as requirements for financial responsibility, sensitive site strategies, and waste storage and management.

In regard to changing the comprehensive OSRP requirements, New York State's Department of Transportation has stated that an existing requirement in part 130 must address the impacts of discharges upon land and groundwater as well as surface waters. In addition, New York State asks that OSRPs include more specific requirements to identify the roles and responsibilities of rail carriers and their supporting contractors relative to local communities and county/regional or state agencies.

Several firefighting and/or emergency response organizations have commented on the need to add, remove, or modify the elements of part 130. The Pacific States/British Columbia Oil Spill Task Force has said that OSRPs for the rail system should have a regulatory framework that is similar to the United States Coast Guard's. The National Association of SARA Title III Program Officials (NASTTPO) and the Oklahoma OHMERC have said that comprehensive OSRPs should enable first responders to have "real time information" on the contents of rail cars involved in accidents and require training and drills to be provided by railroads to local first responders. The City and County of Denver's Local Emergency Planning Committee has also commented in support of NASTTPO's suggestions on modifying comprehensive OSRP requirements. The National Fire Protection Association (NFPA) has advised that two NFPA standards be incorporated into the comprehensive OSRP requirements in order to ensure that personnel responding to hazardous materials incidents be adequately qualified and trained.

In addition, the Transportation Trades Department, AFL–CIO (TTD), which represents transportation workers under the International Association of Fire Fighters (IAFF), has offered some suggestions regarding potential modifications or additions to part 130. TTD has noted that the current requirements "appear to require coordination with only private personnel and not public first responders." They advocate that the role of public response personnel should also be incorporated into comprehensive OSRP requirements. Further, they ask that OSRPs be shared with fire fighters and paramedics. Please see Section V, Subsection E ("Confidentiality/Security Concerns for Comprehensive Oil Spill Response Plans") for further discussion regarding the distribution of OSRPs.

With respect to adding elements to part 130, the Oregon Department of Environmental Quality has shared its state planning standards, including "response time objectives" for the use of containment booms as well as oil recovery operations. Oregon also recommends that comprehensive OSRPs require the establishment of equipment caches along HHFT rail corridors.

Similarly, the State of Minnesota shared some of the developments of the state's recent oil transportation safety law. On behalf of the state, Representative Frank Hornstein and Senator D. Scott Dibble have outlined state requirement that ensure accurate train manifests, establish response timeframes, institute a term of validity of three years for response plans, require that railroads participate in "take home" drills, and encourage the creation of cooperative equipment caches.

The Honorable Edward B. Murray and the City of Seattle have also outlined OSRP elements that need to be added or modified. They have stated that comprehensive OSRPs should provide: A clear understanding of the federal response structure; safety procedures at the response site and for obtaining required state and federal permissions for using alternative response strategies; identification of environmentally and economically sensitive areas; descriptions of the responsibilities of the operator and government officials; and a training program that satisfies the National Preparedness for Response Exercise Program (PREP).

Discussion of Comments: Content of Plan

We agree with the majority of commenters that the current regulations lack specificity and it can be difficult to understand the requirements of the plan. The lack of specificity is reflected in the recommended elements provided by commenters. Commenters from diverse backgrounds suggested that additional requirements for comprehensive oil spill response plans should add greater specificity to existing plan elements. For example, many commenters recommended that drills should satisfy the National Preparedness for Response Exercise Program (PREP). Many commenters also recommended adding elements that were already encompassed in the current comprehensive plan requirements. For example, the requirement to identify environmentally sensitive areas is a component of the current requirement to comply with the National Contingency Plan (NCP) and applicable Area Contingency Plan (ACP). However, the general reference to be consistent with the NCP and ACP in 40 CFR part 300 is unclear, as this is a voluminous citation with many sections that do not apply to rail. Overall, the input from commenters demonstrated a clear need to improve the comprehensive plan requirements. Therefore, we are proposing to separate the requirements for basic and comprehensive plans. The following discussion focuses on the proposed changes to comprehensive plans. As discussed in the previous section, this rulemaking proposes to require comprehensive plans for tank cars containing more than 42,000 gallons of oil in a single package or railroads that transport 20 or more tank cars loaded with liquid petroleum oil in a continuous block in a single train or 35 or more of such tank cars dispersed throughout the train. Thus, the 12-hour response timeframe applies only to track where covered trains traverse.

While it is not feasible to include every element recommended by commenters, we looked for common themes and recommendations between different commenters, requirements which would address challenges faced in recent spill incidents, and requirements addressed by first responders during PHMSA's stakeholder outreach efforts. We have restructured and clarified the requirements of a comprehensive oil spill response plan to be more similar to other federal agencies and to provide greater specificity to assist in the regulated community's compliance with plan elements. We did not propose to adopt the recommendations from commenters that did not have a clear connection to the statutory requirements or parallel requirements in other federal regulations for oil spill response. Overall, the proposed changes are most similar to PHMSA's Office of Pipeline Safety (OPS) OSRP requirements under 49 CFR part 194, as they address OSRPs which must account for large geographic areas, instead of fixed facilities. However, we note there are some differences between responses to pipelines and railroads and we have tailored the proposed requirements appropriately. The proposed changes are intended to clarify the chain of command and communication requirements, and to provide more information about the resources available for response and the conditions the plan addresses, while retaining the same overall plan elements described in the statute.

We agree with the multiple commenters such as API and Mr. Joeckel who recommended using a requirement similar to response zones in pipeline regulations. This approach was identified as the best framework to address the unique challenge of creating a plan which spans large geographic distances. The CWA statute requires that the spill response plans make resources available by "contract or other means." It is unlikely and sometimes impossible for the same responders and resources will be available at all points on a particular route. Therefore, it is important that response zones in the plan both identify the response resources, and ensure the response resources are capable of covering the entire response zone.

Commenters provided different recommendations for response times. Washington State's Department of Ecology, Department of Fish and Wildlife, and Department of Natural Resources; California Department of Fish & Wildlife, Office of Spill Prevention & Response (OSPR), and Oregon Department of Environmental Quality provided 6 hours as an example of a possible response time for illustrative purposes. Both the National Association of SERA Title Three Professionals Organization (NASTTPO) and the Oklahoma Hazardous Materials Emergency Response Commission assumed railroads are capable of mobilizing response resources in 4–6 hours. On this issue of response time frames, AAR and ASLRRA proposed that "[e]ach railroad shall identify in the plan the response resources which are available to respond within the time specified, after discovery of a worst case discharge, as follows: (1) [W]ithin 6 hours for designated high volume area as defined by the plan and (2) [w]ithin 24 hours for all other river or waterways used for interstate transportation and commerce." No commenters provided data to support proposed response times.

Commenters also requested that plans more closely align with other federal agencies, such as the OPS requirements. In § 194.115 "Tier 1" response resources must be available in six hours for "High Volume Areas" and 12 hours for "All Other Areas." Tier 2 and 3 require resources to be available between 30 and 60 areas depending on the designation. Part 194 of the 49 CFR does not include a definition for "Tier," when describing the type of resources. OPS defines "High volume area" in 49 CFR 194.5 as "an area which an oil pipeline having a nominal outside diameter of 20 inches (508 millimeters) or more crosses a major river or other navigable waters, which, because of the velocity of the river flow and vessel traffic on the river, would require a more rapid response in case of a worst case discharge or substantial threat of such a discharge. Appendix B to this [40 CFR part 194] part contains a list of some of the high volume areas in the United States. To ensure response resources are adequately placed, USCG gauges whether response resources can make it to a given location by assuming response resources can travel 35 mile per hour.

This rulemaking proposes to provide a single metric of 12 hours to describe the location of response equipment, which is within the 4 to 24 hour range suggested by commenters. The 12 hour metric aligns with the timeframe for 'tier 1' resources for 'all other areas' required by OPS in part 194. We are also proposing to adopt the USCG assumption that that response resources can travel according to a land speed of 35 miles per hour. Therefore, for response resources traveling by land, the comprehensive OSRP will only be approved if response resources are staged within 420 miles of any point in the response zone, or the railroad demonstrates that a faster speed is achievable (*e.g.* air support to transport resources).

We did not propose a tiered approach to the response resources. The AAR and ASLRRA proposal recommended allowing railroads to define "High Volume Area" within each plan without any criteria for such a definition. As there is nothing prohibiting railroads from staging resources closer to specific route segments, we disagree that a voluntary designation will increase coverage for sensitive areas. We also disagree that 24 hours provides adequate coverage as a single metric. As described above, OPS provides specific criteria used in determining and defining high volume areas that were absent in the AAR and ASLRRA proposal. However, not all the criteria in the OPS definition of "High Volume Area" translate easily to rail transportation (*e.g.*, pipeline diameter). As we stated previously, we assume the entire route threatens navigable water, and further identification for every point along the route is impracticable. Therefore, we assume if even if a shorter response time for spills more likely to impact navigable waters, and a longer response for spills that are less likely to impact navigable waters, railroads may need to locate response resources using the shorter response time requirement for its entire track network where covered trains traverse. This would increase costs with uncertain corresponding benefit. We note that we solicit comment in both this NPRM and the RIA on whether the rule should define specific track locations where shorter response times might be warranted and provide the defining criteria for these locations.

PHMSA acknowledges that some areas in proximity to certain navigable waters may benefit more than other areas from staging and deploying resources in closer proximity, due to the potentially higher consequences of spills in these areas. Therefore, PHMSA will consider adopting shorter response time requirements than 12 hours in the final rule based on information provided by commenters and other information which may become available before a final rule is published. Specifically, PHMSA solicits comments on whether the 12-hour response time is sufficient for all areas subject to the plan, or whether a shorter response time (*e.g.*, 6 hours) is appropriate for certain areas (*e.g.* High Volume Areas) which pose an increased risk for higher consequences from a spill. We request comments on criteria to define such "High Volume Areas" where shorter response time should be required. Additionally, we ask whether the definition for "High Volume Area" in 49 CFR 194.5 (excluding pipeline diameter) captures this increased risk, or if there is other criteria which can be used to reasonably and consistently identify such areas for rail. PHMSA also asks whether requiring response resources to be capable of arriving within 6 hours will lead to improvements in response, and for specific evidence of these improvements. Further, PHMSA requests public comments on whether the final rule should have a longer response time than 12 hours for spills for all other areas subject to the plan requirements in order to offset costs from requiring shorter response times for High Volume Areas.

In addition to the time frame in which response resources must arrive, the effectiveness and adequacy of these resources must also be assessed. To that end, PHMSA has proposed in this rulemaking that affected entities determine a worst-case discharge (WCD) planning volume. PHMSA maintains that, without this particular planning volume, rail carriers that transport petroleum oil in higher-risk train configurations would most likely be unable to "ensure by contract or other means . . . the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge," as stipulated in the statute of the CWA.

For purposes of understanding what constitutes a worst-case discharge in the context of rail transportation of petroleum oil, PHMSA has identified and analyzed the quantity released from tank cars in the major derailments involving petroleum oil that have occurred in recent years in the U.S. This analysis indicates that the worst-case discharge, in terms of the quantity released from tank cars that punctured or experienced thermal tears, would be approximately 500,000 gallons of petroleum oil. In particular, PHMSA has identified the quantity released in the Casselton, ND derailment, wherein 474,936 gallons of crude oil was released, as an approximation of a worst-case discharge.[41] Moreover, the Aliceville, AL derailment involved a comparable quantity released: 455,520 gallons.[42] These derailments signal approximately the volume of petroleum oil that would constitute a worst-case discharge in the U.S.

However, PHMSA has not proposed in this rulemaking that the planning volume for a worst-case discharge be 500,000 gallons because we recognize that the tank car design enhancements promulgated in HM–251 would reduce the overall quantity released in a derailment scenario occurring in the future. In other words, the Casselton, ND derailment involved the release of 474,936 gallons of crude oil, but if a similar derailment were to occur in the future, it would most likely involve a lesser quantity released due to improvements in the puncture resistance and thermal protection of tank cars achieved through HM–251. For this reason, PHMSA has proposed a lesser planning volume for worst-case discharges, adjusting the largest quantity released within the crude-by-rail derailment history (*i.e.*, 474,936 gallons) by the forecasted average effectiveness rate (0.33) that we expect as a result of HM–251-related safety improvements over the ten-year period from 2017–2026. This calculation (474,936 × 0.67) yields 318,000 gallons. Therefore, as our determination of an appropriate WCD planning volume for use in comprehensive OSRPs, PHMSA proposes in this rulemaking that a worst-case discharge be equal to 300,000 gallons.

Nevertheless, PHMSA recognizes that the number of tank cars loaded with petroleum oil in a train consist can vary widely and that 300,000 gallons as a worst-case discharge planning volume may not be appropriate for very large, higher-risk train configurations involving petroleum oil. For example, assuming 30,000 gallons is contained in a single tank car; a 50-tank car train carrying crude oil would carry approximately 1,500,000 gallons, whereas a 100-tank car train would carry approximately 3,000,000 gallons. Thus, PHMSA maintains that a 300,000 gallon planning volume would be appropriate for the 50-tank car train, but it would not be appropriate for the 100-tank car train, which carries substantially more petroleum oil product and as such, presents a much greater risk in the transportation system. Further, PHMSA acknowledges the existence of even larger trains (*e.g.*, 120-tank car trains), as well as the uncertainty surrounding the number of tank cars loaded with petroleum oil that might be transported by rail in the future.

For these reasons, PHMSA has supplemented the 300,000 gallon figure to include another parameter that adequately increases the WCD planning volume for train configurations involving a greater number of tank cars and thus presenting greater risk. The parameter we propose, as a supplementation to the 300,000 gallons WCD planning volume, is the ratio of petroleum oil that could reasonably be expected to release in a derailment to the total quantity of petroleum oil carried within a train consist (*i.e.*, the total petroleum oil lading), most easily expressed as a percentage. PHMSA maintains that a percentage of the total petroleum oil lading in a train consist can be used to identify and differentiate risk among the different types of train configurations that can reasonably be expected to transport large quantities of petroleum oil within a given response zone. Again, we have focused our analysis on the recent U.S. crude-by-rail derailment history and the associated data on the quantity released from the derailed tank cars in these derailments. Specifically, the quantity released in the Casselton, ND indicates that a worst-case discharge would involve 474,936 gallons. If you express this quantity released as a percentage of the total petroleum oil lading carried by the derailed Casselton, ND train, a worst-case discharge would involve approximately 15% of the total petroleum oil lading. This percentage (15%) results from the following calculation: 474,936 gallons released divided by 3,088,000 gallons, which is approximately the quantity of petroleum oil that the train in the Casselton, ND derailment carried. Namely, 104 tank cars loaded with petroleum oil were involved in that derailment and we have assumed that the all tank cars contained 29,700 gallons.[43]

Furthermore, the statutory requirements of CWA state explicitly that a worst-case discharge includes a discharge resulting from fire or explosion. Per 33 U.S.C. 1321 (j)(5)(D)(iii), a response plan must "identify, and ensure by contract or other means . . . the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst-case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge." PHMSA understands this statutory language to mean that railroads must consider the *total quantity* of petroleum oil released from tank cars in a derailment, rather than solely the quantity of petroleum oil that does not burn off as a result of fire or explosion and remains to be recovered. Therefore, in this rulemaking, PHMSA has crafted the definition of worst-case discharge to be consistent with the statutory language set forth in 33 U.S.C. 1321 (j)(5)(D)(iii). Moreover, we hold that the worst-case discharge planning volumes used by railroads, and delineated in their comprehensive plans, must take into account the quantity of petroleum oil that is combusted in fiery or explosive derailments.

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[41] See Appendix B, from the Final Regulatory Impact Analysis from "HM–251: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains."

[42] Ibid.

[43] *http://dms.ntsb.gov/pubdms/search/document.cfm?docID=425467&docketID=55926&mkey=88606.*

In reflection of these analyses, PHMSA proposes that the worst-case discharge for comprehensive plans be defined as follows:

Worst-case discharge means "the largest foreseeable discharge in adverse weather conditions," as defined at 33 U.S.C. 1321(a)(24). The largest foreseeable discharge includes discharges resulting from fire or explosion. The worst-case discharge from a train consist is the greater of: (1) 300,000 gallons of liquid petroleum oil; or (2) 15% of the total lading of liquid petroleum oil transported within the largest train consist reasonably expected to transport liquid petroleum oil in a given response zone."

As previously discussed, PHMSA used an average effectiveness rate achieved through HM–251 to determine the proposed 300,000 gallon WCD planning volume. However, for the proposed WCD planning volume based on the percentage of the total petroleum oil lading within a train consist, PHMSA has not incorporated the average effectiveness rate because we believe that this percentage should be more conservative such that very large train configurations (*e.g.,* 135-tank car trains) would have an appropriate WCD planning volume commensurate with their presentation of increased risk within the rail transportation system. As an illustration of the WCD definition and its application to WCD planning volumes for use in comprehensive OSRPs, consider a 50-tank car train and a 100-tank car train carrying petroleum oil. For the 50-tank car train, the worst case planning volume would be 300,000 gallons, since 300,000 gallons is greater than 15% of the total petroleum oil lading carried by that train (*i.e.,* 225,000 gallons, assuming each tank car carries 30,000 gallons). For the 100-tank car train, the worst case planning volume would be 450,000 gallons, since 15% of the petroleum oil carried by that train, or 450,000 gallons, is greater than 300,000 gallons. PHMSA maintains that distinguishing larger train configurations from relatively smaller ones is appropriate given differences in risk, and we further maintain that this calculation is to be used to determine the "planning volume" for worst-case discharges within a given response zone. It is not re-calculated for each and every train in operation within a given response zone; rather, it is based on the largest train configuration that can reasonably be expected to transport petroleum oil within a response zone. At this time, we do not expect that the proposed worst-case discharge definition will result in benefits or costs. Our preliminary analysis assumes railroads will contract with USCG-certified OSROs to comply with the proposed response and mitigations activities requirements in § 130.106, and it suggests that USCG-certified OSRO coverage is sufficient across the country to meet the proposed response time requirement and that the USCG OSRO classification system assures that classified OSROs have sufficient response resources to respond to a worst-case discharge as proposed this rule.[44] We include questions for comment in Section 4 of our RIA about the benefits and costs of our proposed definition of worst-case discharge and alternative definitions.

We generally agree with AAR and ASLRRA with respect to the overall plan format. Our proposal for requirements includes an information summary, core plan, response zone appendices, clarification of which elements are necessary for a minimum consistency with the NCP and applicable ACP, and a separate training section. We also proposed to allow use of an Integrated Contingency Plan (ICP) to provide flexibility, in recognition that railroads may additionally be subject to the OSRP requirements of other agencies. We also added requirements to describe the railroad's response management system which will help clarify the roles of responders and require use of National Incident Management System (NIMS) and Incident Command System (ICS) for common response terminology. Use of a common terminology is also necessary for the railroad to be able to certify compliance with the NCP and ACP. The importance of describing the management response system and use of NIMS was highlighted by first responders in the "Crude Oil Rail Emergency Response Lessons Learned Roundtable Report." We further request questions on whether the Qualified Individual (QI) should be trained to the Incident Commander level or whether requiring training in use of plan is sufficient.

We further note that use of dispersants is generally not authorized by the NCP or ACP for use on inland oil discharges. We specify that the plans must identify the procedures to obtain any required federal and state authorization for using alternative response strategies such as in-situ burning and/or chemical agents as provided for in the applicable ACP and subpart J of 40 CFR part 300. We disagree with commenters that requirements for dispersants should be further addressed by DOT.

For equipment testing and drills, we proposed requirements which harmonize with OPS. Specifically, we agree with commenters who recommended the National Preparedness for Response Exercise Program (PREP) as the appropriate standard for drills. On April 11, 2016, USCG announced that the updated 2016 PREP Guidelines have been finalized and are now publicly available. These updates included broadening Section 5 of the PREP Guidelines to allow for the inclusion of other DOT/PHMSA-regulated facilities, such as rail.[45] USCG, EPA, BSEE, and OPS require operators to carry out response plan exercises, or periodic testing that affirms whether the response plans are implementable. Response exercises validate the effectiveness of plans, and ensure any deficiencies or shortcomings in their implementation are discovered and fixed via exercise after action reports, instead of during a worst-case discharge.

We disagree with commenters who recommend adopting requirements which are duplicative of other regulations, such as shipping paper manifest information or the proposed information sharing requirements. As described in greater detail in Section II, Subsection D ("Related Actions"), on April 17, 2015 PHMSA and FRA issued notices and a safety advisory notice reminding and clarifying shippers and railroads of their existing obligations to provide certain information during transportation and after incidents.

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[44] *http://www.uscg.mil/hq/nsfweb/nsf/nsfcc/ops/ResponseSupport/RRAB/osro_files/0313Classification%20Guidelines.pdf*

[45] 81 FR 21362.

We agree with commenters that highlighting the need to address adverse weather conditions is important for both response activities and under the statutory requirements. Therefore, we have added a definition for adverse weather, and clarified that equipment must be suitable for adverse weather conditions and planning must incorporate adverse weather preparedness.

We agree with commenters that strengthening the communication requirements is important. Recent incidents and input from first responders in the "Crude Oil Rail Emergency Response Lessons Learned Roundtable Report" highlight the need for better communication procedures. Our proposed changes once again are similar to the OPS, as well as the AAR and ASLRRA, by specifying the need to provide checklists which clarify the order and type of notification to be provided.

Overall, our proposed changes build on the existing framework for OSRPs both in the current regulations and the requirements by other federal agencies. The proposed requirements provide greater specificity than the current requirements, but still allow sufficient flexibility for railroads to tailor the requirements to the unique needs of their organizations and the diverse routes covered by their plans. Most importantly, the proposed changes clarify the need for better communication, identification of resources, and information.

D. Approval of Comprehensive Oil Spill Response Plans

In the ANPRM, PHMSA asked the public if any costs would be incurred in submitting comprehensive OSRPs to the Federal Railroad Administration (FRA). In addition, PHMSA asked if other federal agencies with responsibilities under the NCP should review or comment on rail carriers' comprehensive OSRPs. In sum, these questions inquire about the comprehensive OSRP approval process and consequently, the agency that would have the authority to process rail carriers' submissions of comprehensive OSRPs.

In general, industry stakeholders requested that there be one approving federal agency for comprehensive OSRPs, citing concerns about costs, security, and the clarity of the approvals process. In general, environmental groups, government representatives and other commenters supported additional oversight, including oversight or review by federal agencies, states, SERCs, LEPCs, and/or the public. Commenters also had different suggestions as to which federal agency should ultimately fulfill the responsibilities of approval.

For example, AFPM has stated, ". . .only one agency should ultimately review and comment on a completed comprehensive OSRP. Review by multiple agencies is both duplicative and time-consuming . . . PHMSA is the appropriate agency to provide review . . . [and] there are concerns that a multi-agency review may increase the security risk of OSRPs being disseminated to individuals or groups who should not be privy to this information."

Without expressing support for a particular agency to approve comprehensive OSRPs, API has submitted a similar comment, stating, "[w]hile other agencies, such as USCG and EPA, can offer useful guidance on the process and administration of OSRPs, they should not necessarily comment on the specific aspects that relate to rail operations. Federal multiagency review would . . . likely be an administrative burden for DOT that could be bureaucratically prohibitive to developing an OSRP process that should be implemented in a reasonable time frame."

AAR also holds that only one federal agency should ultimately be responsible for the approval process, but suggests that FRA be the agency that undertakes this. On behalf of its member railroads, AAR states, "[t]he railroads offer that OSRPs should . . . be submitted only to FRA, as primary regulator for rail safety issues, for review." AAR further specifies that PHMSA already has rail-specific regulations that stipulate FRA enforcement responsibilities.

Some commenters have given considerations related to the approval process itself. DGAC states, ". . . if prior FRA approval is required before shipments can be made, serious and costly economic impacts could be expected. Delays in shipments would have a significant negative economic impact on the U.S. economy." Thus, DGAC also acknowledges the notion of FRA approval, but suggests that the approval process should have a regulatory mechanism to allow for shipments of crude oil while the approval process is pending.

States and environmental organizations highlighted the importance of approval as a requirement under the statute. For example, Washington State Department of Ecology (Ecology), the Washington State Department of Fish and Wildlife (WDFW), and the Washington State Department of Natural Resources (DNR) stated "33 U.S.C. 1321(j) expressly requires the President to review and approve the oil spill response plans." The Delaware Riverkeeper Network, however, similarly stated: "approval of these plans [comprehensive OSRPs] should be required before transport of petroleum oil products is permitted." In addition, this commenter has suggested that plans should be submitted to, reviewed, and approved by FRA. Safety consultant John Joeckel highlighted NTSB's Safety Recommendations R–14–01 through R–14–03 to the FRA Administrator on January 23, 2014 which stated,

> [a]lthough 49 CFR 130.31 requires comprehensive response plans to be submitted to the FRA, there is no provision for the FRA to review and approve plans, which calls into question why these plans are required to be submitted. The FRA would be better prepared to identify deficient response plans if it had a program to thoroughly review and approve each plan before carriers are permitted to transport petroleum oil products. In comparison to other DOT regulations for oil transportation in pipelines, an operator may not handle, store, or transport oil in a pipeline unless it has submitted a response plan for PHMSA approval. The NTSB strongly believes there must be an equivalent level of preparedness across all modes of transportation to respond to major disasters involving releases of flammable liquid petroleum products.

California's Office of Spill Prevention Response and Washington State's Department of Ecology also reaffirmed the statute's requirement to approve plans and along with partner commenters within these states, have stated that either PHMSA or FRA could be responsible for plan review and approval.

Commenters have suggested that the approval process include review by several federal agencies. For example, safety consultant John Joeckel has said that OSRPs should be submitted to PHMSA for review and approval, with additional review and comments by the USCG, EPA, and appropriate individual States. The Center for Biological Diversity states, "EPA and USCG should not only review the OSRPs, but PHMSA should require coordination with those agencies through a specific consultation and approval process."

With an emphasis on NEPA and the Endangered Species Act, Harvard Law School's Emmett Environmental Law and Policy Clinic, along with partner commenters, have suggested that FRA's "review of draft OSRPs should include public participation under NEPA and the ESA . . . Similarly, under Section 7 of the ESA, an agency must consult with the U.S. Fish and Wildlife Service or National Marine Fisheries Service when it authorizes a private action."

Thus, several commenters have advised that the review and approval of comprehensive OSRPs include multiple federal agencies, such as the USCG, EPA, PHMSA, FRA, the U.S. Fish and Wildlife Service, and/or the National Marine Fisheries Service.

Some commenters suggested that state-based approval processes be adopted. For example, the League of California Cities has stated, ". . . in California, there are regional OSPRs that are coordinated through the state. Railroads' OSPRs should also be coordinated and consistent with state and regional plans." Similarly, several members of the concerned public, such as Daniel Wiese, Jared Howe, and Mary Ruth and Phillip Holder, have recommended that the authority for plan approval be granted to states.

In regard to state-based approval processes, some commenters have proposed that state approval be coordinated through SERCs, TERCs, and/or LEPCs. For example, King County, WA has recommended that the "OSRP be developed in consultation . . . with [the] SERC or other appropriate state delegated entity," and the City of Seattle has asked that SERCs and LEPCs "have the opportunity to review and comment on the OSRPs." Other commenters have noted that SERCs, TERCs, LEPCs and/or other local emergency responders should be provided with the plans, but do not specify whether this type of coordination between rail carriers and these entities would explicitly become part of the plan approval process. For more information regarding the distribution of plans for purposes of disclosure, preparedness, and implementation, please see the comment summaries and discussion within Section V, Subsection E ("Confidentiality/Security Concerns for Comprehensive Oil Spill Response Plans").

Other commenters from the concerned public and departments within city and state governments highlighted state legislation related to oil spill response plans and request that PHMSA provide assurance that such legislation will not be preempted by this rule. Joint comments from the Washington State DNR, Ecology, and WDFW stated "This clearly preserves state authority to adopt requirements for response plans from railroads. PHMSA's rulemaking should confirm this understanding in its Federalism analysis." Specific commenters have proposed that cities or local governments are considering developing permitting processes to require review and comment on OSRPs at this level. The City of Seattle has stated that the "City of Seattle is developing a new Right of Way Term Permitting process to be applied to expired railroad franchise agreements . . . and enables local jurisdictions with Rail—Arterial Right of Way impacts to better enforce public safety, environment, and liability issues such as making review and approval of the OSRPs for High Hazard Flammable Trains a mandatory requirement . . . Unfortunately, until federal legislation is passed requiring all railroad companies to develop and submit OSRPs to municipalities for review, this process will be difficult to enact and enforce." For further discussion of preemption issues, please see the Section VIII, Subsection C ("Executive Order 13132").

Some commenters have indicated that the general public should be allowed to review and comment on OSRPs and as a result, be involved in the plan approval process. Harvard Law School's Emmett Environmental Law and Policy Clinic, along with partner commenters, have recommended that plan approval include a "robust public participation process." This commenter continues, "[t]o this end, the regulations should require the publication of draft OSRPs followed by a period for public comment upon them."

Commenters have suggested terms of validity for plan approval. Safety consultant John Joeckel, in particular, has suggested that the plans be approved for a period of five years. Commenters have also explained that plans should be re-submitted in the event of any significant changes.

Discussion of Comments: Approval of Plans

We agree with industry commenters that mandating multiagency approval could cause undue delays, burdens, and security risks. Furthermore, 33 U.S.C. 1321 (j)(5)(E) requires a plan that meets the minimum requirements to be approved. Therefore, we disagree with the premise that mandating multi-agency or public participation would provide enough value in an explicit approval process to justify the increased burden and potential delay. Furthermore, the resources for mandatory consultation with other agencies and public participation could potentially divert resources from safety activities. However, we encourage the comments of Federal, State, and local agencies and tribal authorities addressing the proposed requirements for the development of OSRPs.

As FRA is the agency which has delegated authority to approve oil spill response plans for rail tank cars, we are proposing FRA as the sole agency required to approve railroad comprehensive oil spill response plans. Under 33 U.S.C. 1321 (j)(5)(D)(vi), spill response plans must "be resubmitted for approval of each significant change." However, we agree with commenters that ensuring plan consistency with the NCP and ACP is important. We are clarifying that FRA may consult with the EPA or the USCG, if needed. This may be necessary to facilitate the needs of the Federal On-Scene Coordinator, such as verifying compliance with elements related to consistency with the NCP or ACP. This also aligns with the requirements for plan approval under PHMSA OPS.

The current requirements for plan submission are under § 130.31(b)(6), which requires comprehensive plans to be "submitted, and resubmitted in the event of any significant change, to the Federal Railroad Administrator." Under 33 U.S.C. 1321 (j)(5)(E), guidelines for review and approval by the President are specified when "any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone." As discussed previously in the background section of this document, the President's authority to approve plans was delegated to the Secretary of Transportation and then to the Federal Highway Administration and the Federal Railroad Administration (FRA) for motor carriers and railroads, respectively. USCG, EPA, BSEE, and PHMSA Office of Pipeline Safety (OPS) were delegated the authority to regulate and approve plans for their respective facility types.

As requested by commenters, we are further clarifying the submission and approval procedures to align with both the statute and other federal agencies. AAR and ASLRRA submitted proposed regulatory text with many similarities to PHMSA OPS requirements. We have proposed to adopt many requirements similar to the OPS submission and approval under sections 194.119 and 194.121. Among other changes, we are clarifying that electronic copies are the preferred format. At this time, railroads may mail copies of plans contained on CD–ROMs, USB flash drive, or similar electronic formats. FRA may make other versions of electronic submission available in the future. We are requiring railroads to review plans every five years, or after an incident requiring use of the plan occurs. Plans must also be updated if a significant change occurs. Significant changes must be approved by FRA. Significant changes are those that affect the operation of the plan, such as establishment of a new railroad route not covered by the previously approved plan, or changing the name of the emergency response organizations identified in the plan.

In accordance with both the statute and requests from commenters, we have clarified the process for railroads to respond to alleged deficiencies in the plan identified by FRA and to allow railroads to continue to operate after they have submitted the plan and are awaiting approval decision. We are further clarifying that railroads may follow the existing procedures under section 209.11 in the FRA regulations to request confidential treatment for documents filed with the agency, provided the information is exempt by law from public disclosure (*e.g.*, exempt from the mandatory disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), required to be held in confidence by 18 U.S.C. 1905). Under this process, FRA retains the right to make its own determination in this regard. Therefore, this change clarifies the process to comply with existing laws and confidential treatment will not be extended to other information in the plan which is not currently exempt under other existing laws. PHMSA provides similar procedures for similar requests for confidential treatment of documents under § 105.30. Overall, the proposed requirements help create an equivalent level of safety for petroleum oil across all facility types.

E. Confidentiality/Security Concerns for Comprehensive Oil Spill Response Plans

In the ANPRM, PHMSA asked the public the following question: "Should PHMSA require that the basic and/or the comprehensive OSRPs be provided to State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Fusion Centers, or other entities designated by each state, and/or made available to the public?" Commenters submitted a variety of comments regarding the distribution of OSRPs and relayed ideas about which entities should be provided with or provided access to comprehensive OSRPs. This distribution might include SERCs, TERCs, Fusion Centers, other state entities, or the general public.

The majority of commenters support the distribution of OSRPs to SERCs or other emergency response organizations. Among the commenters in support are: The National Fire Protection Association (NFPA); the Department of Law, City of Chicago; LRT-Done Right; the Center for Biological Diversity; NASTTPO; the Riverfront Park Association; the Delaware Riverkeeper Network; the Flathead Basin Commission; King County, WA; New York State Department of Transportation; OHMERC; The Response Group; the Village of Barrington, IL and the TRAC Coalition; Washington State; the Waterkeeper Alliance; and the Solano County Department of Resource Management. In general, these commenters hold that SERCs should have the plans and could oversee the transmission of plan information to emergency response organizations within cities, counties, or other localities. These commenters emphasize that emergency responders would benefit from having the plan so as to prepare more effectively for rail accidents involving crude oil.

Other commenters have expressed support for the distribution or disclosure of OSRPs to SERCs or other appropriate emergency response organizations, but expressed concerns about security risks and the distribution or disclosure of OSRPs to the general public. Among these commenters are: AFPM, AAR, and ASLRRA.

With regard to security concerns, AFPM has said, "[a]lthough communications are vital . . . SSI [sensitive security information] should be disclosed to only a limited group of people on a "need to know" basis . . . Broader dissemination raises significant security concerns in light of the possible targeting of rail by terrorist and others." AAR and ASLRRA have provided a similar comment on this issue, stating, "[i]f required by DOT to share very specific OSRP information with the SERCs, the railroads are concerned that a potential bad actor would be able to obtain the information . . . Releasing to the public the worst case scenarios and the available response resources and equipment in the OSRPs could provide a bad actor with key information crucial to planning environmental terrorism activities." Thus, while acknowledging the potential value of distributing OSRPs, industry commenters have expressed security concerns and advised there should be limitations imposed on the distribution of OSRPs and certain types of information (*i.e.*, SSI).

AAR and ASLRRA have also articulated that the distribution of OSRPs, even to bona fide emergency response organizations such as SERCs, could result in further dissemination to the general public. Regarding this point, AAR and ASLRRA have referred to the example of Emergency Order Docket No. DOT–OST–2014–0067, which required railroads to make crude oil routing information available to SERCs. AAR states, "[w]hile the railroads do not believe it was DOT's intention, the EO has often resulted in the information it requires railroads to disclose to SERCs being made publically available." AFPM has voiced similar concerns. Thus, according to some industry stakeholders, security concerns would remain even if the distribution of OSRPs were limited to SERCs or other appropriate emergency response organizations.

Other commenters have stated that OSRPs would or would not be restricted due to security concerns. The Waterkeeper Alliance has communicated, "[i]n our view, this data should not be restricted . . . Furthermore, the data should not be deemed a security issue, nor should there be any restrictions placed on intra-government dissemination of the data. This data is vital to the public welfare . . . To keep these train movements secret would directly endanger the public." Hence, some commenters disagree that distributing or disclosing OSRPs would entail security concerns.

Commenters have also relayed that the entities developing OSRPs may have rights of confidentiality (*i.e.*, OSRPs are "proprietary"). In relating the context of the State of California, the Office of Spill Prevention and Response has stated, "[i]n California, the oil spill contingency plans submitted to OSPR are available for public review by law, but a plan submitter can request that a portion of a plan that is proprietary or is a trade secret can be designated accordingly."

On the issue of confidential business rights, other commenters have stated that OSRPs should or would not be confidential business information. Accordingly, Harvard Law School's Emmett Environmental Law and Policy Clinic, along with partner commenters, have said, "[m]andatory disclosure only to federal officials, as is currently the case, is inadequate given that state and local authorities will usually be the first responders to an accident and bear the burden of ensuring preparedness and the consequences of failing to do so. PHMSA should also mandate public disclosure of OSRPs. The contents of such plans will not be . . . confidential business information."

Thus, many commenters suggested that OSRPs be made available to the public. For example, the Delaware Riverkeeper Network has commented, "[t]hese plans should also be made available to the public via an easily accessible web platform. The Web site should include everything interested parties need or want to know and everything an emergency response team would want to tell them." Other commenters have supported making OSRPs available to the general public, such as: The Riverfront Park Association; the Center for Biological Diversity; the Waterkeeper Alliance; and Harvard Law School's Emmett Environmental Law and Policy Clinic.

A few commenters have agreed that plans can be made available to the public, but clarified that this disclosure would include only non-SSI material. Accordingly, New York State has commented, "[r]elease of the non-security sensitive portions of these plans to the public can also be accommodated using the policies already established for the Area Contingency Plans established by OPA 90." Therefore, disclosure to the public need not include entire copies of comprehensive OSRPs.

On this topic, a safety consultant, John Joeckel stated, "I do not see the need to have the Comprehensive OSRPs available to the public as long as the local responding agencies have the necessary information contained in the OSRP, *e.g.*, the response zone/geographic zone appendices containing notification procedures, response resource availability, etc." Thus, commenters have also identified that the disclosure of comprehensive OSRPs may not be necessary, irrespective of whether the information within OSRPs is deemed to be SSI or confidential.

Some commenters have asked that the distribution of plans involve processes beyond the provision of OSRPs to appropriate emergency response entities. For example, the Oklahoma OHMERC has said, "[t]he delivery should be more than mailing a plan to the LEPC, the railroad should present the plan in person so that local emergency response planners and responders have the opportunity to ask questions and discuss roles under the OSRP." In addition, the Delaware Riverkeeper Network has expressed that "meetings should be used to educate community members about evacuation plans and how to access up-to-date information in the event of an emergency." Further, The Response Group has asked that railroad companies be required to "follow the precepts that PHSMA expects pipeline companies to follow and align those requirements . . . [with] API RP 1162."[46] Thus, multiple commenters have stated that plan distribution should involve more than the provision of OSRPs to specific entities; it could also include meetings with local communities, as well as presentations delivered to local emergency responders.

Discussion of Comments: Confidentiality/Security Information

Transparency is important to PHMSA as the agency provides resources to the emergency response community in many forms. As described in the Section II, Subsection D–5 ("Stakeholder Outreach"), PHMSA and the railroads have been engaged in multiple activities and partnerships to take a comprehensive approach to providing training and emergency response information resources about the hazard of crude oil. We disagree however that providing the entire OSRP to emergency responders will lead to better preparedness. Some elements of the OSRP may be sensitive for security, business, or privacy reasons. Other elements are specific to railroad operations, and will not inform the actions of first responders or communities.

To ensure emergency responders have pertinent information from plans, we are proposing that information describing the response zones and contact information for the qualified individual are provided to SERCs and TERCs as part of the information sharing requirements proposed in section 174.312. This allows emergency responders to understand which communities are included in the same response zone and the appropriate contact for the OSRP information at the railroad. Adding these requirements takes an integrated approach to the regulations and ensures the different types of emergency response information will be presented in a cohesive, usable format. We believe that the current requirements to notify fusion centers under routing information, and the proposed information sharing requirements for SERCs and TERCs described under Section II, Subsection E ("HHFT Information Sharing Notification") will work cumulatively to provide emergency response organizations with the complete information they need about a route to prepare for flammable liquids transiting their communities without compromising security. In addition, by clarifying requirements for the OSRP (including notification procedures and the roles and responsibilities of individuals within the plan), railroads will be able to more quickly disseminate the information and conditions specific to the incident to appropriate local, state, and Federal agencies.

F. Comprehensive Oil Spill Response Plan Costs

In the ANPRM, PHMSA asked the public what costs the regulated community would incur in order to: (1) Develop comprehensive OSRPs; (2) remove or remediate discharges; and (3) conduct training, drills and equipment testing. PHMSA also asked about commenters' assumptions and requested that commenters provide detailed estimates.

With regard to plan development costs, two commenters provided estimates of labor costs; however, PHMSA did not receive any detailed cost estimates. The majority of commenters chose to emphasize other considerations that they deemed to be relevant in estimating the costs of OSRPs.

AAR and ASLRRA, in particular, have stated that PHMSA would need to supply more information about plan requirements in order to develop detailed cost estimates. AAR states, "[w]ithout further guidance from PHMSA . . . the railroads are unable to provide more specific cost estimates." However, as a general estimate, AAR and ASLRRA estimate that a "petroleum crude oil spill response plan, without equipment cost included, could cost a railroad anywhere from $100,000–$500,000."

Other commenters provided general cost estimates for plan development. For example, the Response Group has stated that labor would cost $100 per hour and that a new plan would require approximately 120 hours of work. This yields $12,000 as the labor cost component of the overall plan development costs per railroad. John Joeckel, a safety consultant, has offered another estimate, stating that an individual railroad's "core" plan would cost approximately $31,000. This estimate includes: 250 labor hours, compensated at $115 per hour, and $2,250 in printing and administration costs. The commenter has also estimated that the "core" plan would need to be supplemented by

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[46] Federal pipeline safety regulations (49 CFR 192.616 and 49 CFR 195.440) require pipeline operators to develop and implement public awareness programs that follow the guidance provided by the American Petroleum Institute (API) Recommended Practice (RP) 1162, "Public Awareness Programs for Pipeline Operators" (incorporated by reference in federal regulations). More information is available at: *https://primis.phmsa.dot.gov/comm/PublicAwareness/PARPI1162.htm.*

"geographic response zone appendices," which would require 50 labor hours, compensated at $115 per hour, and $250 in printing and miscellaneous costs. Thus, the development of the response zone appendices would add at least an additional $6,000 to overall plan development costs, yielding $37,000 in total. While it is not clear if $6,000 in costs would be incurred for the development of each additional response zone appendix, this commenter has clarified that each railroad will need a different number of response zone appendices, since some railroads have extensive track networks and other rail carriers (*e.g.,* Short Lines and Regional Railroads) do not.

As previously stated, several commenters did not supply cost estimates but chose to draw attention to other considerations, such as the estimated cost of cleaning up oil spills. For example, the Delaware Riverkeeper Network has articulated, "[t]he costs incurred to create and implement a comprehensive OSRP . . . should be considered the cost of doing business, and are minimal when compared to the costs incurred to clean up and attempt to remedy crude rail accidents. For example, in 2013, over 1.15 million gallons of crude oil were spilled in over 35 accidents, and clean-up costs of one accident alone are estimated to total at least $180 million." In addition, a concerned member of the public has said, "[f]or consideration of costs (see advance notice items 4, 5, and 6), the agency should include costs to communities and their economies from crude oil spills."

In addition to AAR and ASLRRA, other commenters have expressed that they were not certain of the costs of developing a comprehensive OSRP. For example, New York State has asked PHMSA to "ascertain cost estimates." Similarly, other commenters have communicated that, while they are uncertain of the plan development costs that railroads would face, pipeline oil spill response plans are likely to be analogous in some respects. To that effect, the City of Seattle has commented, "[w]hile we do not have the information necessary to know what costs the railroads and shippers may incur for developing the comprehensive OSRPs, we know that there are current pipeline response plans through the U.S. While they do not directly apply to rail activities, portions of these existing plans are applicable and will provide the railroad industry with a head start toward a comprehensive plan." Thus, multiple commenters have expressed some uncertainty regarding the costs of developing a comprehensive OSRP.

Some commenters have stated that the cost of developing a comprehensive OSRP would be "nominal" or "not significant" since railroads are already compliant with many of the current OSRP requirements under part 130, including the requirements for a basic OSRP. For example, the Oregon Department of Environmental Quality has said, "[m]ost railroad companies currently have basic oil spill response plans. Many of these plans already identify additional equipment and personnel available to them by contract or other approved means. These companies have also identified the equivalent of a qualified individual. Rail companies should not incur significant costs in developing comprehensive OSRPs." Similarly, NASTTPO has stated, "[a]ssuming the rail carriers are already doing a compliant basic OSRP, the incremental cost should be nominal." Further, the City and County of Denver, Office of Emergency Management and Homeland Security, as well as the OHMERC, have expressed their support of the comments by NASTTPO. However, these commenters did not supply additional information to clarify the threshold at which costs could be considered "significant" or "nominal."

In addition to asking the public about plan development costs, PHMSA inquired about the costs incurred to remove discharges. PHMSA asked about the placement of equipment along the track, the types of equipment needed to remove or contain discharges, and the maximum time needed to contain a worst-case discharge. Some commenters have suggested maximum response times, as well as limited cost estimates, but overall the comments received lack detail and do not identify the range of costs that would be incurred to remove discharges. In addition, commenters have specified some types of equipment, such as containment booms, work boats, skimmers, and foam concentrate, but the commenters' listing of equipment does not appear to be exhaustive.

With regard to discharge removal, AAR and ASLRRA have stated that equipment costs can be substantial. Without providing detailed cost information, AAR has cited that deploying a single containment boom could cost $15,000. AAR has not included other information regarding the costs of response resources and equipment.

Safety consultant John Joeckel has identified a variety of potential costs that might be incurred in removing discharges. On this issue, Mr. Joeckel has stated, "[c]osts will either be directly capitalized by the rail operator for company owned resources to inventory, for membership dues increases for a cooperative to purchase and stockpile resources or for increased "retainer" fees from contractors that will charge the rail operator for their listing as a contracted resource in the OSRP." In addition, Mr. Joeckel clarifies, "there are substantial resources already available throughout the nation in many areas, including locations in near proximity to rail trackage, so it is not necessarily a given that any new response requirements will automatically result in the need to purchase and stockpile and thus won't necessarily entail new significant costs for the railroad industry." Further, this commenter has stated that response resources for discharge removal are generally "secondary" to the resources that would be necessary for ensuring public safety immediately following an incident, such as foam, foam application systems, and "toxic emission plume monitoring" equipment. As a result, this commenter has suggested that planning standards for response resources should allow for the "cascading" of resources, or in other words, a "tiered" response wherein some types of equipment are required at the site of an incident before others.

NASTTPO has not specified any types of equipment or cost estimates, but has offered relevant assumptions regarding planning and the use of response resources. The commenter states, "[w]e presume that rail carriers should be able to mobilize contract responders to any point on their system within 4–6 hours dependent on weather. Contractors that provide such services are common and the trucking industry along with insurance carriers routinely pre-contract for these services." Thus, according to this commenter and partner commenters, contracting for response resources is "routine" and as a result, industry stakeholders should be able to identify response providers and are aware of the costs involved.

New York State and the Oregon Department of Environmental Quality have emphasized that discharge removal and other response resources must be allocated according to a risk analysis. New York State, in particular, has suggested that the 27 factors that railroads use for routing analyses (under § 172.820) could serve as a way to identify "the areas of highest vulnerability or . . . areas that have impediments to access for first responders." In addition, this commenter has provided estimates for foam concentrate, stating, "[t]he cost for 600 or more gallons of Class B foam concentrate estimated as necessary for fire control and post-fire vapor suppression for an incident involving a single DOT–111 rail car carrying crude oil, pursuant to the flow rates identified in NFPA II, exceeds $23,000 at current New York State Contract pricing. Combined with the costs of the apparatus needed to apply "finished" foam onto a fire or spill, the estimated cost can total $40,000 or more per unit." Consequently, the potential high cost of response equipment underscores the commenter's emphasis on risk analyses to determine equipment allocation along train routes.

The City of Seattle has estimated $20,000 as the cost of air monitoring and personal protection equipment (PPE). The commenter states that these costs are not currently budgeted by Seattle Public Utilities, which, according to the commenter, is one of the city's agencies that would respond to an incident.

The Delaware River and Bay Oil Spill Advisory Committee has offered estimates of the capital investments needed to prepare for a "debris mission." The commenter states, "the capital cost to stand up a floating debris collection mission could be in the range of $14 million to $21 million." According to the commenter, city or state authorities would undertake these capital investments, so it is not clear if these costs would be included in cost estimates for a comprehensive OSRP.

With respect to the costs of cleaning up oil spills, The League of California Cities has stated, "[m]ost importantly, these plans [OSRPs] should provide for the obligation to pay for recovery, including all required clean-up." Other commenters have communicated that the costs of discharge removal are "minimal" and are the "cost of doing business." Thus, these commenters seek to stress that the costs to communities that experience an oil spill can be large and must be considered alongside the costs to implement OSRPs.

In the ANPRM, PHMSA also asked the public to comment on training costs, such as the costs of conducting drills or testing equipment. In addition, many commenters discussed which entities would be responsible for providing training or ensuring that training is adequately funded. Commenters have also supplied some basic cost estimates for different components of training.

AAR and ASLRRA have stated that training costs can be substantial and estimated that a single training exercise or drill could cost between $60,000 and $150,000. AAR and ASLRRA have also stated, "[w]ithout further guidance from PHMSA . . . the railroads are unable to provide more specific cost estimates."

New York State has identified various costs associated with the training of first responders and emergency personnel. The commenter has cited "the costs of providing staffing (backfills) for career fire departments and . . . consumables required for effective and realistic training such as training foam. Staffing backfill costs will vary by jurisdiction but can be significant, and if not addressed, limit participation of critical response agencies with a corresponding negative impact upon effectiveness." The commenter has not provided any cost estimates related to backfills or consumables.

Some commenters have suggested that the cost of training be funded by railroads. For example, the City of Lockport, IL has said, "[t]he new guidelines proposed by Federal Pipeline and Hazard Materials Safety Administration (PHMSA) must include adequate emergency preparation and response protocols for local agencies responding to these incidents and the Railroads profiting from this transportation should provide this at no cost to local responders." The commenter has not estimated the cost to rail carriers if they were to provide this training.

The League of California Cities has made a similar comment, stating, "[f]ully-funded regular training programs that cover the cost of training, including backfill employee costs, to ensure that first responders are trained, and remain trained, on up-to-date procedures to address the unique risks posed by these shipments." In this case, the commenter has not specified the source of this funding.

Other commenters have suggested that rail carriers should not be expected to pay for the costs of training local first responders. NASTTPO has expressed, "[w]e have no expectation that the rail carriers would be paying for the attendance of local first responders at training events and exercises." The commenter has also expressed that, since the rulemaking should not require railroads to pay for the training of local first responders, the costs imposed on the regulated community as a result of training requirements should be "nominal." In agreement, the City and County of Denver's Office of Emergency Management and Homeland Security has stated that they support all the comments made by NASTTPO.

Oklahoma's OHMERC has similarly stated that railroads should not be expected to pay the costs of training local first responders, but emphasizes that "given the fact that volunteer fire fighters have other job obligations, training would be most effective delivered locally."

The Dangerous Goods Advisory Council has suggested that ensuring training among emergency responders will be difficult due to practical and financial concerns. DGAC has stated, "DGAC supports the training of emergency responders in how to properly respond to hazardous materials incidents. However, it may be difficult, time consuming, and costly to individually train each emergency response organization in the areas through which a 'key' or 'unit' train transporting crude oil travels. It is unlikely that every local emergency response organization located along the route could afford to develop and maintain the necessary resources to respond to significant incidents involving crude oil derailments." Given this concern, the commenter holds that "regional response teams" may be an effective alternative.

Various commenters have suggested that PHMSA adopt training elements from the National Preparedness, Response and Exercise Program (PREP) guidelines, which have been developed through multi-agency participation and coordination, including DOT, USCG, EPA, and DOI. Safety consultant, John Joeckel, the Office of Spill Prevention & Response (OSPR), and Washington State have voiced support for NPREP. According to commenters, NPREP training covers a variety of training exercises (*e.g.*, table-top, seminar, announced and unannounced exercises, etc.) which entail different costs.

Commenters have mentioned other standards for training or equipment testing requirements. For example, Safety consultant John Joeckel has referenced a 1994 publication entitled, "Training Reference for Oil Spill Response," as well as the U.S. Coast Guard's Oil Spill Response Organization (OSRO) Classification program for the testing of equipment. Further, the commenter maintains that contractors working with rail carriers would "in all likelihood" already be participating in the OSRO Classification program, suggesting that the industry's available response resources could be compliant with existing equipment testing requirements under USCG. With regard to cost estimates, Mr. Joeckel is unable to quantify a monetary value for relevant training exercises.

OSPR has suggested other training sources, such as the Hazardous Waste Operations and Emergency Response (HAZWOPER), a set of guidelines overseen by the Occupational Safety and Health Administration (OSHA) and regulated in 29 CFR part 1910. OSPR has also mentioned free, online training on the Incident Command System (ICS) offered by the Federal Emergency Management Agency (FEMA). With regard to training cost estimates, OSPR has stated, "In California, OSPR has been informed that an OSRO-managed drill could cost about $2,000 for a small tabletop drill and up to $500,000 or more for a full scale multi-day exercise; but regulated entities could agree to share these costs for a particular drill."

Given the variety of training sources and opportunities available, the National Emergency Management Association (NEMA) has suggested that DOT facilitate the creation of a standardized training curriculum. The commenter states, "U.S. DOT should work with railroads, the U.S. Fire Administration and fire service organizations toward developing a standardized curriculum for responding to railroad emergencies for the Bakken Crude. This will ensure that firefighters are equally trained in the event of an incident involving more than one state." Regarding the funding of training, this commenter has asked that DOT ensure that the Hazardous Materials Emergency Preparedness (HMEP) Grant Program be used to fund regional and interagency drills for rail safety response.

Discussion of Comments: Plan Costs

We appreciate commenters' efforts to provide initial cost considerations and estimations, despite the challenges they cited in providing data. We have incorporated commenters' cost estimates to the extent possible, but note that these estimates lacked detail and data. We further clarify that the estimated cost of the proposed oil spill response plan requirements is the cost of plan development, submission, and maintenance; contract services for OSROs; and training and exercises.

To elaborate, the costs of plan development were estimated as a function of the time and compensation that a senior railroad employee or contractor needs to develop the plan, as well as the number of response zone appendices needed in connection with the railroad's core plan. PHMSA estimated that on average it would cost a Class I railroad about $15,000 to develop a plan, it would cost a Class II railroad $8000 to develop a plan, and it would cost a Class III railroad $7000 to develop a plan. Plan submission and maintenance were also estimated as a function of the time and compensation of the employee that submits and maintains the plan. PHMSA estimated that on average it would cost a Class I railroad about $1,500 for plan submission and maintenance, it would cost a Class II railroad $800 for plan submission and maintenance, and it would cost a Class III railroad $700 for plan submission and maintenance. We estimated the cost of OSRO services by interviewing an OSRO and obtaining a range for potential retainer fees. Retainer fees may vary based on the Class (I, II, III) of the railroad as well as the number of response zones that PHMSA–OHMS expects the railroads to have. PHMSA estimated that on average it would cost a Class I railroad about $40,000 annually to retain an ORSO for each of its 8 response zones, it would cost a Class II railroad $6000 annually to retain an ORSO for each of its 2 response zones, and it would cost a Class III railroad $2500 annually to retain an ORSO for its single response zone. The costs of training are estimated as a function of the number of employees requiring training, the duration of the training in hours, and the wage rate applied. Separate from training, we have also estimated costs of exercises, such as those prescribed in PREP guidelines. Since PREP guidelines are consistent across Federal agencies, we used costs estimated by the USCG, including travel costs and additional OSRO fees for drill-related deployment of resources.

Please see the draft RIA for the quantitative aspect of this discussion and further explanation of the anticipated cost impacts of the proposed rule.

G. Voluntary Actions

In the ANPRM, PHMSA asked the public to comment on the role of industry's voluntary and current actions regarding oil spill response planning. In particular, PHMSA asked, "What, if any, aspects beyond the basic plan requirements do these plans voluntarily address?"

In regard to the information contained within basic OSRPs, commenters offered a variety of ideas, but the majority of commenters have relayed that the current knowledge base surrounding basic oil spill response plans is limited. Commenters have stated that this knowledge of basic plans is limited because many entities, including states, cities, local community groups, and some emergency response organizations, do not have access to rail carriers' basic plans. In addition, some commenters stated that they have encountered issues in coordinating with rail carriers on this issue. Further, other commenters have voiced that basic OSRPs do not provide adequate information to local first responders, even if they are communicated effectively to those responders.

The Response Group has stated, "I have never seen a current railroad oil spill response plan . . . I have developed a prototype oil spill response plan suitable for rail based upon experience with Coast Guard, EPA, PHMSA and OSHA."

Safety consultant John Joeckel has stated, "[a]nswers [to ANPRM question #7] should be provided by the rail operators . . . since they are the only entity that currently has access to the Basic OSRPs . . . and have not been reviewed or approved by State or Federal agencies and have not been seen by the general public." However, Mr. Joeckel comments further, stating that, despite the public's limited knowledge of OSRPs, "I would have to assume that there will be a wide range of differences between basic OSRPs amongst the rail industry sector particularly differences between a Class I rail operator versus a Class II and Class III rail operator." Thus, Mr. Joeckel has explained that only the rail carriers understand what is currently addressed in existing OSRPs, and he suggests that there is a "potential wide variance in response preparedness amongst the industry."

Similarly, New York State has commented that, "[t]o date, the railroads and associated shippers have not shared their OSRPs with New York State as they currently are not required to under federal law or regulations." Thus, New York State has underscored that the knowledge surrounding oil spill response plans and their contents is limited and reiterated that the requirements under part 130 do currently not address the distribution of plans or which entities might have access to them. For more discussion on plan distribution, please see Section V, Subsection E ("Confidentiality/Security Concerns for Comprehensive Oil Spill Response Plans").

The City of Seattle has made a similar comment. This commenter states, "[w]ithout access to review and comment on OSRP the City of Seattle cannot determine compliance with requirements." As previously noted, the City of Seattle also seeks to make review and approval at the municipal level a part of the permitting and permit renewal processes for "Right of Way Franchise Agreements."

Some commenters have stated that current OSRPs are not adequate, which suggests at least a familiarity with their current form and contents. For example, NASTTPO has stated, "[b]asic OSRPs are not successful as noted . . . They do not provide adequate information to local first responders even if they are communicated to those responders." OHMERC has also stated, "OSRPs should be more detailed and contain better information for responders.''

AAR and ASLRRA have held a different opinion than the majority of commenters due to their unique understanding of OSRPs and industry background. Regarding current OSRPs, AAR and ASLRRA have stated, ''[r]ailroads have been very proactive in emergency response planning and outreach . . .'' They cited implementation of the AAR Circular OT–55, training efforts, and efforts to provide an inventory of emergency response resources. However, these comments did not include any details describing whether railroads were providing voluntary compliance with specific comprehensive oil spill response plan requirements.

In the ANPRM, PHMSA specifically asked, ''[t]o what extent do current plans meet the comprehensive OSRP requirements, including procurement or contracting for resources to be present to respond to discharges?'' As previously mentioned, the majority of commenters have stated that their knowledge of current OSRPs is limited due to limited access and challenges of coordination with railroads. For this reason, most commenters were unable to answer this question, as it requires an understanding of the form and contents of current OSRPs. Without this understanding, it is difficult to assess to what degree current plans have incorporated response resources contracting as would be required under the part 130 requirements for comprehensive OSRPs.

AAR and ASLRRA have addressed this question, stating, ''[p]ursuant to the industry's commitment to Secretary Foxx, AAR has developed an inventory of emergency response resources along routes over which Key Crude Oil Trains operate for responding to the release of large amounts of petroleum crude oil in the event of an incident. This inventory also includes locations for the staging of emergency response equipment and, where appropriate, contacts for the notification of communities.'' Thus, according to this commenter, voluntary actions combined with compliance to the basic OSRPs currently required already include planning for response resources. However, these comments did not include any additional data or details describing whether railroads were providing voluntary compliance with specific comprehensive oil spill response plan requirements.

Discussion of Comments: Voluntary Actions

While we applaud the voluntary efforts railroads have taken to improve safety, they do not carry the weight of law and the extent to which these voluntary efforts meet the requirements of current comprehensive oil spill response plans is difficult to quantify based on the comments received. The Oil Pollution Act of 1990 requires the creation of oil spill response plans with specific minimum elements for ''an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.'' Furthermore, voluntary actions do not carry the weight of regulations to ensure continued compliance and enforceability.

We agree with NTSB's safety recommendation that the recent spill history demonstrates that unit trains and other trains carrying large quantities of petroleum oil meet this definition of ''substantial harm to the environment'' and thus require comprehensive plans. Furthermore, basic plans are not sufficient for higher-risk train configurations as they do not require the railroad to ensure the availability of response resources or provide other elements to address the response challenges we have identified in this rulemaking. Comments addressing plan contents describe the clear need to require additional elements for comprehensive plans and to provide additional clarifications to those elements.

VI. Incorporated by Reference

Section 171.7 lists all standards incorporated by reference into the HMR that are not specifically set forth in the regulations. This NPRM proposes to incorporate by reference the ASTM D7900–13 Standard Test Method for Determination of Light Hydrocarbons in Stabilized Crude Oils by Gas Chromatography, 2013, available for interested parties to purchase in either print or electronic versions through the parent organization's Web site at the following URL: *http://www.astm.org/cgi-bin/resolver.cgi?D7900-13e1*. The price charged for these standards to interested parties helps to cover the cost of developing, maintaining, hosting, and accessing these standards. This publication (*i.e.*, test method) ensures a minimal loss of light ends for crude oils, containing volatile, low molecular weight components (*e.g.* methane) because it determines the boiling range distribution from methane through n-nonane. The specific standards are discussed in greater detail in the Section II, Subsection G. (''Initial Boiling Point Test'') of this rulemaking.

VII. Section-by-Section Review

Part 130

We propose to restructure part 130 to establish the following subparts:

Subpart A—Applicability and General Requirements contains current §§ 130.1–21 with minor revisions and clarifications.

Subpart B—Basic Spill Prevention and Response Plans contains current §§ 130.31–33 with minor revisions to remove comprehensive plan requirements.

Subpart C—Comprehensive Oil Spill Response Plans is a new Subpart with new requirements for comprehensive oil spill response plans.

Section 130.2

Paragraph (d) is updated to show that the requirements in § 130.31(b) have moved to subpart C. PHMSA does not propose any other changes to this section.

Section 130.5

The introductory text is reformatted, including moving the definition for ''Animal fat'' to the correct alphabetical order. Definitions for ''Adverse Weather,'' ''Environmentally Sensitive or Significant Areas,'' ''Maximum Potential Discharge,'' ''Oil Spill Response Organization,'' ''On-scene Coordinator (OSC),'' ''Response activities,'' ''Response Plan,'' and ''Response Zone'' are added in response to commenters. Definitions for ''Petroleum Oil'' and ''Worst-case discharge'' are revised to better clarify the applicability of the terms. The term ''Person'' is revised to clarify railroads are included in the term. The term ''Maximum Potential Discharge'' is currently used in the requirements for basic plans and is currently ''synonymous with Worst-Case Discharge.'' We are proposing to separate the definitions to facilitate the newly proposed definition for ''Worst-Case Discharge'' for comprehensive plans. The mailing address for the Office of Hazardous Materials Safety is updated in the note for the definition of ''Liquid.''

Section 130.31

This section is revised editorially to clarify that it applies to basic oil spill response plans only. References to comprehensive oil spill response plans are removed.

Section 130.33

This section is revised to clarify that it only applies to basic oil spill response plans.

Section 130.101

Establishes a new section which moves the current applicability for comprehensive oil spill response plans of 42,000 gallons per packaging from § 130.31 to § 130.101, and expands the applicability for comprehensive oil spill response plans to include "Any railroad which transports a single train transporting 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist must submit a comprehensive plan meeting the requirements of this subpart."

Section 130.102

Establishes a new section for general requirements for the overall development of the comprehensive response plan and requires the plan uses the National Incident Management System (NIMS) and Incident Command System (ICS).

This section also establishes general requirements for the plan format including the development a core plan and the establishment of geographic response zones and accompanying response zone appendixes.

This section also allows for use of the Integrated Contingency Plan (ICP) format to provide greater flexibility.

Section 130.103

Establishes a new section which requires a railroad to certify in the comprehensive response plan that it reviewed the NCP and each applicable ACP and that its response plan is consistent with the NCP and each applicable ACP through compliance with a list of minimum requirements.

Section 130.104

Establishes a new section which requires a comprehensive response plan to include an information summary.

Section 130.105

Establishes a new section with requirements for the notification procedures and contact information that a railroad must include in a comprehensive oil spill response plan.

Section 130.106

Establishes a new section for railroads to describe the response and mitigation activities and the roles and responsibilities of participants in the comprehensive oil spill response plans.

Section 130.107

Establishes a new section for railroads to certify employees are trained in accordance with the requirements of this section.

Section 130.108

Establishes a new section for requirements for equipment testing and drill procedures consistent with PREP requirements for comprehensive oil spill response plans.

Section 130.109

Establishes a new section with requirements for recordkeeping, review, and submission of comprehensive oil spill response plans.

Section 130.111

Establishes a new section with the requirements and procedures to submit comprehensive oil spill response plans for approval to FRA.

Section 130.112

Establishes a new section to apply the same plan implementation requirements for comprehensive oil spill response plans formerly under in § 130.33.

Part 171

Section 171.7

Add paragraph 173.121(a)(2)(vi) titled "Petroleum products containing known flammable gases" stating, "Standard Test Method for Determination of Light Hydrocarbons in Stabilized Crude Oils by Gas Chromatography (ASTM D7900). The initial boiling point is the temperature at which 0.5 weight percent is eluted when determining the boiling range distribution."

Part 173

Section 173.121

Add paragraph 173.121(a)(2)(vi) titled "Petroleum products containing known flammable gases" stating, "Standard Test Method for Determination of Light Hydrocarbons in Stabilized Crude Oils by Gas Chromatography (ASTM D7900). The initial boiling point is the temperature at which 0.5 weight percent is eluted when determining the boiling range distribution."

Part 174

The authority is updated to include 33 U.S.C. 1321.

Section 174.310

Section 174.310 provides a list of the additional requirements for the operation of HHFTs. A new paragraph (a)(6) titled "Oil spill response plans" is added for clarity to provide a reference to the part 130 requirements for HHFTs composed of trains carrying petroleum oil.

Section 174.312

Part 174, subpart G provides detailed requirements for flammable liquids by rail. The HHFT Final Rule added § 174.310 to this subpart to establish requirements for HHFTs. In this NPRM, we are proposing to add a new § 174.312 to subpart G of part 174 to require rail carriers that operate HHFTs to provide monthly notifications to each applicable SERC, TERC, or other appropriate state delegated agencies for further distribution to appropriate local authorities, upon request. New proposed § 174.312 specifies that the notifications must include:

- A reasonable estimate of the number of HHFTs that the railroad expects to operate each week, through each county within the state or through each tribal jurisdiction;
- the routes over which the HHFTs will operate;
- a description of the hazardous material being transported and all applicable emergency response information required by subparts C and G of part 172; at least one point of contact at the railroad (including name, title, phone number and address) with knowledge of the railroad's transportation of affected trains (referred to as the "HHFT point of contact"); and
- If a route is subject to the comprehensive spill plan requirements, the notification must include a description of the response zones (including counties and states) and contact information for the qualified individual and alternate, as specified under § 130.104(a).

As proposed, railroads may provide the required notifications electronically or in hard copy and will be required to update the notifications monthly. If there are no material changes to the estimates provided in a month, proposed paragraph (a)(2)(i) would require the railroad to provide a certification of no change. As proposed, paragraph (a)(2)(iii) would require that each point of contact be clearly identified by name or title and role (*e.g.*, qualified individual, HHFT point of contact).

Through the expansion of the applicability of the routing requirements in § 172.820 in the HHFT Final Rule to in include HHFTs and this NPRM's new proposed § 174.312, we have established an information sharing framework that enables the railroads to work with state officials to ensure that safety and security planning is occurring. Under existing § 172.820(g) of the HMR, fusion centers and other state, local, and tribal officials with a need-to-know will continue to work with the railroads on routing and risk analysis information conducted pursuant to part 172, subpart I, for information that is deemed SSI. At the same time, proposed new § 174.312 will ensure that SERCs, TERCs or other appropriate state agencies will routinely receive and share non-sensitive information from rail carriers regarding the movement of HHFTs in their jurisdictions that can aid local emergency responders and law enforcement in emergency preparedness and community awareness.

PHMSA seeks public comment on all aspects of this proposal and in particular the issues identified below. When commenting, please reference the specific portion of the proposal, explain the reason for any recommended change, and include the source, methodology, and key assumptions of any supporting evidence.

1. Whether particular public safety improvements could be achieved by requiring the railroads to provide the notification proposed in paragraph § 174.312 directly to organizations other than SERCs, TERCs, or other state delegated agencies?
2. Whether requiring the information sharing notifications to be made by railroads directly to the TERCs is the best approach to provide information to tribal governments or whether providing a notification to the National Congress of American Indians to disseminate to affected tribes or another entity is more appropriate?
3. Whether there are alternative means by which PHMSA can fulfill the FAST Act's direction to establish security and confidentiality protections, where this information is not subject to security and confidentiality protections under Federal standards.

VIII. Regulatory Review and Notices

A. Executive Order 12866, Executive Order 13563, Executive Order 13610, and DOT Regulatory Policies and Procedures

This NPRM is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget (OMB). It is also considered a significant regulatory action under the Regulatory Policies and Procedures order issued by DOT (44 FR 11034; February 26, 1979). PHMSA has prepared and placed in the docket a draft Regulatory Impact Assessment addressing the economic impact of this proposed rule.

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' Executive Order 13610 (''Identifying and Reducing Regulatory Burdens''), issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies. DOT believes that streamlined and clear regulations are important to ensure compliance with important safety regulations. As such, the Department has developed a plan detailing how such reviews are conducted.

Additionally, Executive Orders 12866, 13563, and 13610 require agencies to provide a meaningful opportunity for public participation. Accordingly, PHMSA invites comments on these considerations, including information to improve the estimates of costs and benefits; alternative approaches; and relevant scientific, technical, and economic data. These comments will help PHMSA evaluate whether the proposed requirements are appropriate. PHMSA also seeks comment on potential data and information gathering activities that could be useful in designing an evaluation and/or retrospective review of this rulemaking.

The proposed rule became necessary due to relatively recent expansions in U.S. energy production, which has led to significant challenges in the transportation system. Expansion in oil production in North America relative to the 2000s has led to increasing volumes of this product transported to refineries and other transport-related facilities.

The U.S. is now a global leader in crude oil production. With the expectation of continued domestic production, rail transportation remains a flexible alternative to transportation by pipeline or vessel. The number of intra-U.S. rail carloads of crude oil approached 370,000 in 2013, reached approximately 450,000 carloads in 2014, and fell to approximately 390,000 carloads in 2015.[47] Total crude-by-rail movements in the United States and between the United States and Canada were more than 1 million barrels per day (bbl/d) in 2014, up from 55,000 bbl/d in 2010.[48]

As of April 2016, the Bakken region of the Williston basin was producing over one million barrels of oil per day, which is commonly transported by rail.[49] The U.S. Energy Information Administration's ''Annual Survey of Domestic Oil and Gas Reserves'' reports that in addition to North Dakota's Bakken region, the shale plays in reserves in North America are extensive.[50]

Expansion in oil production in North America has led to increasing volumes of this product transported to refineries. Traditionally, pipelines and oceangoing tankers have delivered the vast majority of crude oil to U.S. refineries, accounting for approximately 93 percent of total receipts (in barrels) in 2012. Although other modes of transportation—rail, barge, and truck—have accounted for a relatively minor portion of crude oil shipments historically, volumes have risen very rapidly relative to the 2000s. The transportation of large volumes of crude oil and other petroleum products by rail under the current regulatory scheme poses a risk to life, property, and the environment. Figure 1 provides the average monthly U.S. rail movements of crude oil from 2010 through January 2016.

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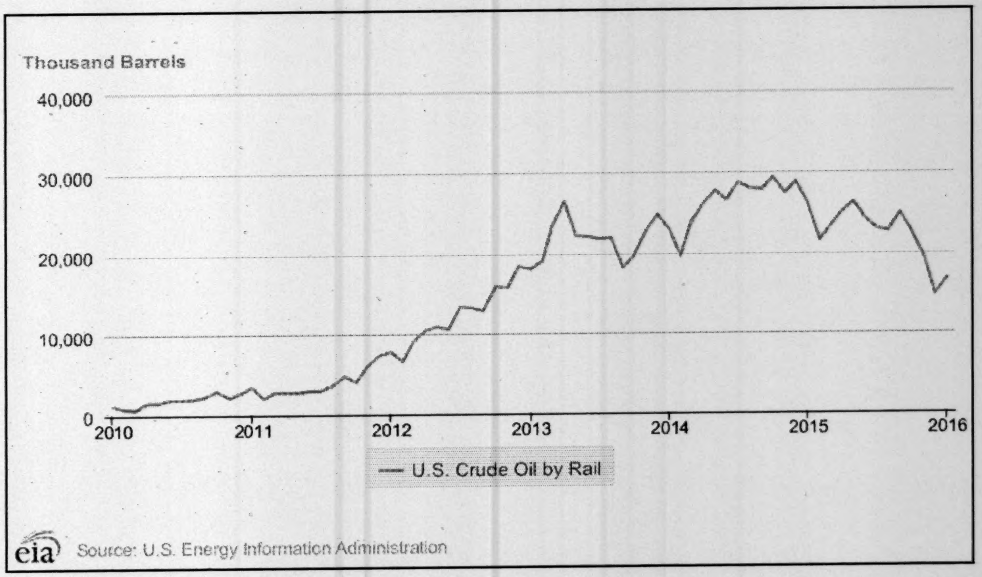
[47] *http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=ESM_EPC0_RAIL_NUS-NUS_MBBL&f=M*

[48] *http://www.eia.gov/todayinenergy/detail.cfm?id=20592.*

[49] Information regarding oil and gas production is available at the following URL: *http://www.eia.gov/petroleum/drilling/#tabs-summary-2* .

[50] EIA ''U.S. Crude Oil and Natural Gas Proved Reserves, 2013,'' available at: *http://www.eia.gov/naturalgas/crudeoilreserves/pdf/uscrudeoil.pdf* .

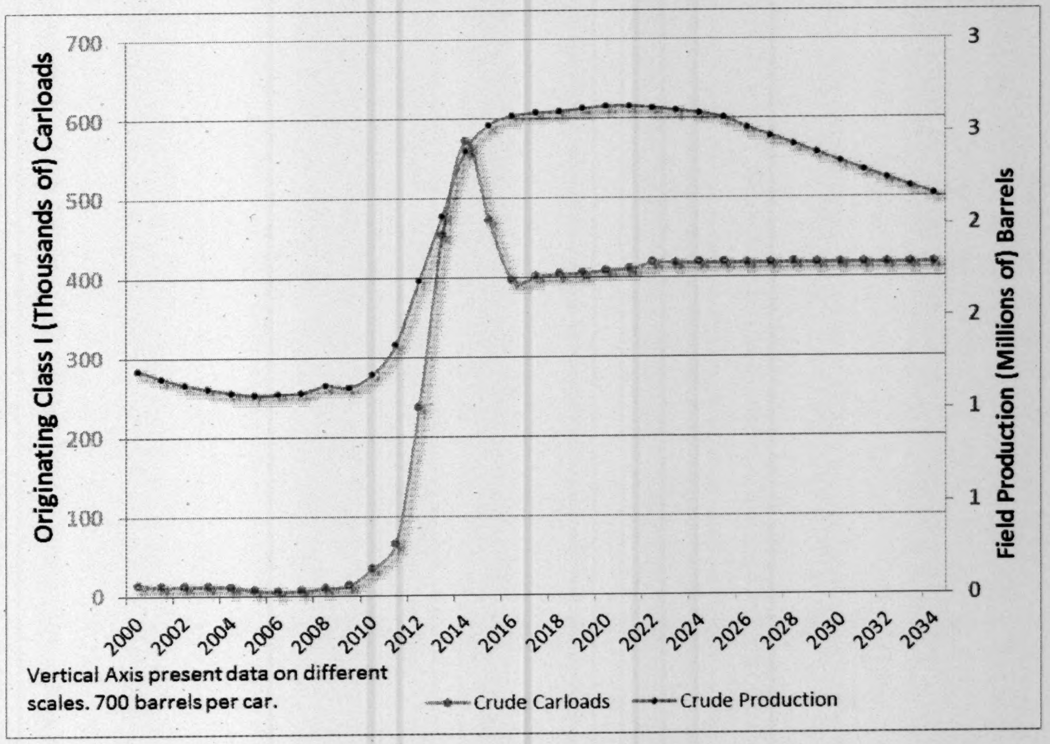
FIGURE 1:



Source: U.S. Energy Information Administration

Figure 2 shows the growth in U.S. crude oil production since 2000, as well as growth in the number of rail carloads shipped. Figure 2 also shows forecasted domestic crude oil production from EIA and projections to 2034 for the rail shipment of crude oil.

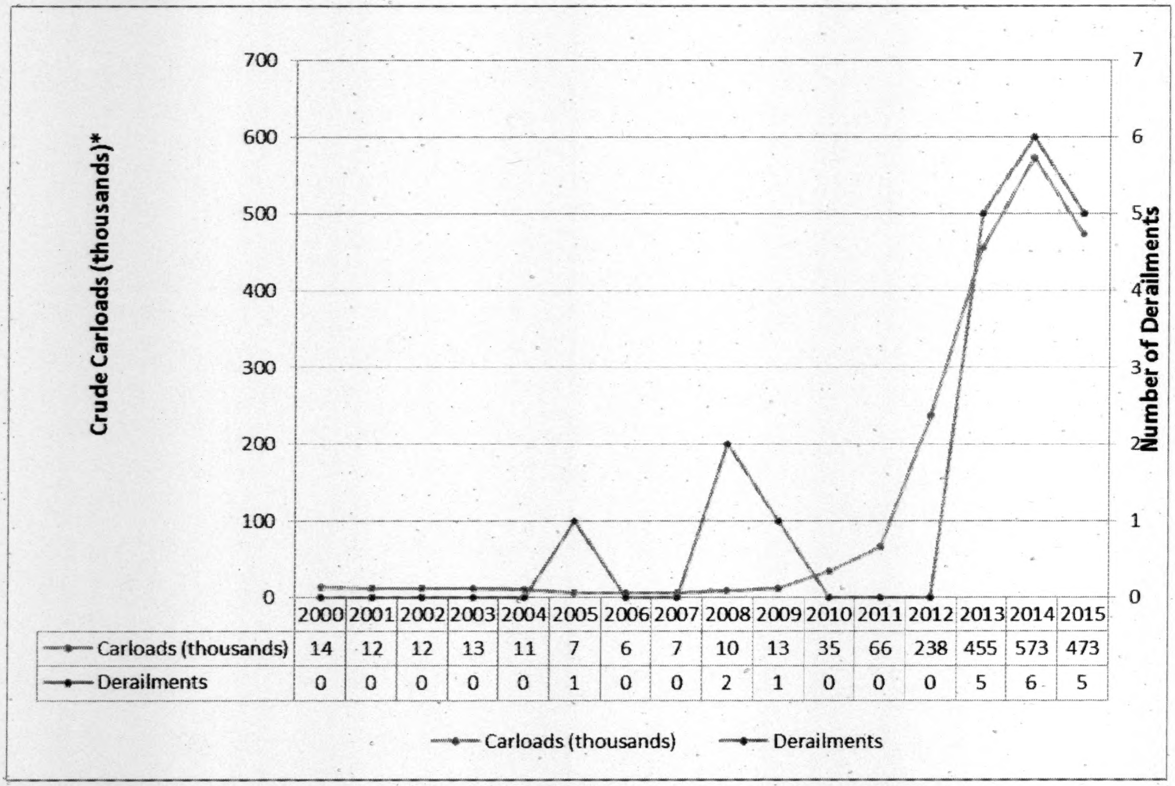
FIGURE 2:



Vertical Axis present data on different scales. 700 barrels per car.

Rail accidents have risen along with the increase in crude oil production and rail shipments of crude oil relative to the 2000s. Figure 3 below shows this rise.[51]

FIGURE 3:



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Carloads (thousands)	14	12	12	13	11	7	6	7	10	13	35	66	238	455	573	473
Derailments	0	0	0	0	0	1	0	0	2	1	0	0	0	5	6	5

Based on these train accidents, the expectation of continued domestic crude oil production, and the number of train accidents involving crude oil, PHMSA maintains that improved oil spill response planning is essential to protecting the environment against the risks of derailments involving large quantities of petroleum oil.

PHMSA has identified several recent derailments to illustrate the circumstances and consequences of derailments involving petroleum oil transported in higher-risk train configurations: Watertown, WI (November 2015); Culbertson, MT (July 2015); Heimdal, ND (May 2015); Galena, IL (March 2015); Mt. Carbon, WV (February 2015); La Salle, CO (May 2014); Lynchburg, VA (April 2014); Vandergrift, PA (February 2014); New Augusta, MS (January 2014); Casselton, ND (December 2013); Aliceville, AL (November 2013); and Parkers Prairie, MN (March 2013).

For example, on December 30, 2013, a train carrying crude oil derailed and ignited near Casselton, North Dakota, prompting authorities to issue a voluntary evacuation of the city and surrounding area. On November 7, 2013, a train carrying crude oil to the Gulf Coast from North Dakota derailed in Aliceville, Alabama, spilling crude oil in a nearby wetland and igniting into flames.

These derailments of HHFTs transporting crude oil have resulted in releases of petroleum oil that harmed or posed a threat of harm to the nation's waterways. Of note here is Safety Recommendation R–14–5, which recommended that PHMSA revise the spill response planning thresholds prescribed in 49 CFR part 130 to require comprehensive OSRPs that effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and petroleum products.[52] PHMSA developed the revisions included in this NPRM in response to NTSB's safety recommendations, as well as the aforementioned recent derailments.

On June 17, 1996, DOT's Research and Special Programs Administration (RSPA) published a final rule issuing requirements that sought to meet the intent of the Federal Water Pollution Control Act (Clean Water Act; 61 FR 30533) and Oil Pollution Act of 1990 (see 33 U.S.C. 1321). This rule adopted requirements for packaging, communication, spill response planning, and response plan implementation intended to prevent and contain spills of oil during transportation. Under these current requirements, railroads are required to complete a basic OSRP for oil shipments in a package with a capacity of 3,500 gallons or more, and a comprehensive OSRP is required for oil shipments in a package containing more than 42,000 gallons (1,000 barrels).

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[51] Source: STB Waybill Sample and PHMSA Incident Report Database.

[52] National Transportation Safety Board. (2014, January 21). *Safety Recommendation R–14–4 through –6*. Retrieved from *http://www.ntsb.gov/safety/safety-recs/recletters/R-14-004-006.pdf*.

Currently, all of the rail community that transports oil, including crude oil transported as a hazardous material, is subject to the basic OSRP requirement of 49 CFR 130.31(a) since most, if not all, rail tank cars being used to transport crude oil have a capacity greater than 3,500 gallons. However, a comprehensive OSRP for shipment of oil is only required when the quantity of oil is greater than 42,000 gallons per tank car. Accordingly, the number of railroads required to have a comprehensive OSRP is much lower, or possibly non-existent, because a very limited number of rail tank cars in use would be able to transport a volume of 42,000 gallons in a car.[53] Thus, the existing regulatory framework for basic plans in part 130 constitutes the regulatory baseline and PHMSA anticipates that many railroads are likely to meet the basic plan requirements under part 130.

In addition, many railroads may voluntarily exceed the minimum standards set forth by basic plans. Given that similar oil spill response planning requirements are already in place for facilities, pipelines, and vessels, PHMSA anticipates that response resources are currently available across the U.S. As we anticipate that many railroads may voluntarily exceed the minimum standard for compliance, the change to the current planning and response baseline is likely to be less than the change in the regulatory baseline (*i.e.,* the change from basic to comprehensive plans).

PHMSA's preliminary analysis indicates that the planning and response baseline currently provides for a level of OSRO coverage and response resource availability that is consistent with the proposed rule's response timeframe of 12 hours. In the aggregate, PHMSA–OHMS could not identify any rail routes within the continental U.S. that lack coverage from the network of USCG-certified OSROs analyzed. By our estimation, all potential rail routes transporting large quantities of petroleum oil in the continental U.S. could be serviced by an OSRO in the event of a petroleum oil train derailment within 12 hours. For additional discussion of our baseline analyses, please refer to the "Baseline Analysis" section in the draft RIA for this proposed rule.

In summary, the proposed rule would expand the applicability of comprehensive OSRPs based on thresholds of crude oil that apply to an entire train consist. Specifically, the proposed rule would expand the applicability for OSRPs so that no person may transport a single train transporting 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist unless that person has implemented a comprehensive OSRP. Furthermore, this NPRM proposes to require railroads to share additional information with state and tribal emergency response organizations (*i.e.* SERCs and TERCs) to improve community preparedness and to incorporate the voluntary use of the IBP test (ASTM D7900) to determine classification and packing group for Class 3 Flammable liquids.[54]

In the sections that follow, we outline the costs of OSRPs and information sharing provisions, as well as the breakeven analysis we developed in order to proactively generate a benefits outlook for this rule. The provision to incorporate by reference ASTM D7900 is not expected to impose costs on the regulated community; thus, we estimate no quantitative benefits for that particular provision.

Costs

Each railroad subject to the proposed rule must prepare and submit a comprehensive OSRP that includes a plan for responding, to the maximum extent practicable, to a worst-case discharge and to a substantial threat of such a discharge of oil. The OSRP must also be submitted to the FRA, where it will be reviewed and approved by FRA personnel.

The following entities would be subject to the comprehensive plan requirements in the proposed rule:

1. Any railroad transporting any liquid petroleum or non-petroleum oil in a quantity greater than 42,000 gallons per packaging must submit a comprehensive plan meeting the requirements of this subpart.
2. Any railroad transporting any single train carrying 20 or more tank cars of liquid petroleum oil in a continuous block or 35 or more of such cars in a single train must submit a comprehensive plan.
   a. In determining number of tank cars, the railroad is not required to include tank cars carrying mixtures of petroleum oil not meeting the criteria for Class 3 flammable or combustible hazardous material in 49 CFR 173.120 or containing residue.
3. A railroad meeting the requirements for a comprehensive plan need not submit a plan if otherwise excepted in 49 CFR 130.2(c).

For determining the entities that would be affected by the proposed threshold, PHMSA used the definition of "high hazard flammable train" (HHFT) established in the "Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains—Final Rule" published on May 8, 2015.[55] PHMSA narrowed the affected entities to only include railroads that transport crude oil and, in consultation with FRA, revised the estimated number of Class III carriers that would be subject to the rulemaking. Based on this assessment, PHMSA estimates there are 73 railroads (7 Class I, 11 Class II, and 55 Class III) that would be subject to this proposed rulemaking. In addition, PHMSA evaluated several alternatives related to the threshold quantities that trigger the need for a comprehensive plan in order to develop a range for the entities affected by the OSRP provisions proposed in this rule. The results of that analysis are presented further in the draft RIA, available in the docket for this rulemaking.

These estimates were derived for the purpose of estimating the costs and benefits associated with the proposed rule. PHMSA believes that the approach used represents a conservative estimate for the number of affected entities and specifically solicits comment on the approach and estimated values used in this analysis.

The universe of affected entities for the information sharing requirements is different than the number of entities affected under the comprehensive response plan requirement. The applicability of this requirement is derived from the information published in the HM–251 Final Rule; specifically, the definition of a high-hazard flammable train (HHFT) and the information sharing portion of the routing requirements of that final rule. The universe of affected entities for this provision includes all HHFTs transporting crude petroleum oil and ethanol, or 178 railroads (7 Class I, 11 Class II, and 160 Class III). For purposes of assessing costs for this provision, however, PHMSA determined there should be no additional costs for Class I railroads to comply with this proposed revision per the AAR Circular OT 55–O revision on January 27, 2015, which required AAR members to provide bona fide emergency response agencies or planning groups with specific commodity flow information covering all hazardous commodities transported through the community for a 12-month period in rank order. We assume this includes the proposed information to be shared with SERCs and TERCs as required in this proposed rule. In addition, on May 7, 2014, DOT issued an Emergency Restriction/Prohibition Order in Docket No. DOT–OST–2014–0067[56] that required each railroad transporting 1,000,000 gallons or more of Bakken crude oil in a single train in commerce within the U.S. to provide certain information in writing to the SERC for each state in which it operates such a train. PHMSA determined that 40 Class II and Class III railroads were part of this order and have already developed the required notification. As such, those entities are only subject to the proposed on-going updates and submission requirements included in this rulemaking. Therefore, we estimate that 131 railroads will be required to develop notifications as a result of the proposed rule and 171 railroads will be affected by the proposed monthly updates and recordkeeping requirements.

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[53] The 2014 AAR's Universal Machine Language Equipment Register numbers showed five tank cars listed with a capacity equal to or greater than 42,000 gallons, and none of these cars were being used to transport oil or petroleum products.

[54] The ASTM D7900 is not currently aligned with the testing requirements authorized in the HMR forcing shippers to continue to use the testing methods authorized in § 173.121(a)(2). This misalignment results in a situation wherein an industry best practice for testing of crude oil (ASTM D7900 for initial boiling point) that was developed in concert with PHMSA is not authorized by the HMR. We note that the incorporation of API RP 3000 and consequently ASTM D7900 will not replace the currently authorized testing methods, rather serve as a testing alternative if one chooses to use that method. PHMSA believes this provides flexibility and promotes enhanced safety in transport through accurate PG assignment. This provision would not pose any costs.

[55] 80 FR 26643, pp 26643–26750. May 8, 2015.

Table 11 provides a summary of the estimated per carrier cost associated with the proposed rule requirements for response plans and information sharing. For purposes of this analysis, PHMSA has identified several categories of costs related to the development of a comprehensive response plan. Those costs include: Plan development, submission, and maintenance; contract fees for designating an OSRO; training and drills; and plan review and approval costs to the Federal government. For additional information about the development of these cost estimates, see the draft RIA.

TABLE 11—UNDISCOUNTED UNIT COST PER RAILROAD BY RAILROAD CLASS

Category	Frequency	Railroad	Unit cost per carrier
Plan Development	Once every 5 years	Class I	$14,777
		Class II	8,128
		Class III	7,019
Plan Maintenance	Annual	Class I	1,478
		Class II	813
		Class III	702
Plan Submission	Once every 5 years	Class I	20
		Class II	20
		Class III	20
OSRO Fee	Annual	Class I	40,000
		Class II	6,000
		Class II	2,500
Training and Drills	Varies	Class I	65,203
		Class II	41,559
		Class III	27,373
Information Sharing	Year 1	All Railroads	7,589
	Annual	All Railroads	2,319

For purposes of this analysis, PHMSA assumed a 10-year timeframe to outline, quantify, and monetize the costs and benefits of the proposed rule and to demonstrate the net effects of the proposal. Table 12 provides a summary of the undiscounted costs by year for this 10-year period by railroad class, and Table 13 provides a summary of the undiscounted costs by provision for this 10-year period.

TABLE 12—SUMMARY OF UNDISCOUNTED 10-YEAR COSTS BY RAILROAD CLASS

Year	Oil spill response plans			Information sharing	Total
	Class I	Class II	Class III	All railroads	
1	$850,342	$621,706	$2,068,728	$1,076,029	$4,616,806
2	416,246	272,731	1,165,012	384,558	2,238,547
3	416,749	273,465	1,168,636	387,477	2,246,327
4	417,257	274,208	1,172,303	390,430	2,254,198
5	865,737	635,420	2,111,227	393,418	4,005,803
6	418,293	275,720	1,179,767	396,441	2,270,220
7	418,820	276,489	1,183,565	399,499	2,278,373
8	419,353	277,267	1,187,408	402,594	2,286,622
9	419,892	278,055	1,191,296	405,725	2,294,969
10	886,026	653,493	2,167,234	408,894	4,115,646
Total	5,528,716	3,838,553	14,595,175	4,645,065	28,607,509

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[56] *http://www.dot.gov/briefing-room/emergency-order.*

TABLE 13—SUMMARY OF 10-YEAR COSTS BY PROVISION (UNDISCOUNTED)

Year	Plan development	Plan maintenance	Plan submission	OSRO fees	Training and drills	Information sharing	Total
1	$578,907	$57,891	$1,421	$483,500	$2,419,058	$1,076,029	$4,616,806
2	0	58,328	0	483,500	1,312,161	384,558	2,238,547
3	0	58,771	0	483,500	1,316,579	387,477	2,246,327
4	0	59,219	0	483,500	1,321,049	390,430	2,254,198
5	596,719	59,672	1,465	483,500	2,471,029	393,418	4,005,803
6	0	60,130	0	483,500	1,330,149	396,441	2,270,220
7	0	60,594	0	483,500	1,334,779	399,499	2,278,373
8	0	61,064	0	483,500	1,339,464	402,594	2,286,622
9	0	61,539	0	483,500	1,344,205	405,725	2,294,969
10	620,193	62,019	1,523	483,500	2,539,517	408,894	4,115,646
Total	1,795,818	599,227	4,409	4,835,000	16,727,990	4,645,065	28,607,509

Table 14 provides a summary of the total and annualized costs by railroad class discounted at a 3 and 7 percent rate.

TABLE 14—SUMMARY OF UNDISCOUNTED AND DISCOUNTED TOTAL AND ANNUALIZED COSTS

Class of railroad	Undiscounted		3% Discount rate		7% Discount rate	
	10 Year	Annualized	10 Year	Annualized	10 Year	Annualized
OSRPs						
Class I	$5,528,716	$552,872	$4,861,419	$569,907	$4,169,222	$593,603
Class II	3,838,553	383,855	3,374,946	395,647	2,894,820	412,157
Class III	14,595,175	1,459,518	12,825,770	1,503,572	10,987,301	1,564,344
Information Sharing						
All Railroads	4,645,065	464,506	4,159,026	487,565	3,650,832	519,796
Total	28,607,509	2,860,751	25,221,160	2,956,689	21,702,175	3,089,901

Based on this cost analysis, PHMSA believes that the primary costs drivers for this proposed rule are the annual fees associated with the OSRO contracts, the annual training and drill requirements, and the information sharing provisions.

PHMSA solicits comment on the approach and estimated costs used in this analysis, as well as the assumptions and estimates used in these particular costs categories.

Benefits

The proposed response plan requirements are designed to reduce the magnitude and severity of spills, thereby reducing the environmental damages and potential human health impacts that spills may cause. PHMSA faced data uncertainties that limited our ability to estimate the benefits of this proposed rule. Instead, PHMSA performed a breakeven analysis by identifying the number of gallons of oil that the NPRM would need to prevent from being spilled in order for its benefits to at least equal its estimated costs. The analysis estimates that each prevented gallon of oil spilled yields social benefits of $211. Additional benefits may also be incurred due to ecological and human health improvements that may not be captured in the value of the avoided cost of spilled oil. These issues are discussed in more detail in the accompanying draft RIA, and the reader is referred to that document for more detail. PHMSA specifically solicits comment on both the monetized and non-monetized benefits assessed in this analysis.

In order to assess the baseline conditions that would be affected by the proposed rule, PHMSA evaluated data provided in the Hazardous Material Incident Reports Database.[57] Specifically, PHMSA evaluated reported incidents from 2004–2015 involving liquid petroleum transported by rail. Most of the incidents are relatively minor non-accident releases on which an OSRP would have no effect. Railroads would only be required to develop comprehensive OSRPs along routes where the potential for a worst-case discharge of oil is possible. These are routes on which HHFTs operate, because an accidental release involving a derailment, train collision, or other accident involving trains hauling large quantities of petroleum oil are the only incidents that have the potential to result in a large quantity release of material. Above we presented the significant crude oil derailments graphed against carloads of product shipped by rail for 2000–2015.

A comprehensive OSRP would be required to cover those routes/railroads that haul petroleum oil HHFTs, so the benefits analysis is limited to those derailments involving petroleum oil HHFTs. The Agency has identified 12 such derailments between 2012 and 2015. Specifically, there were 3 events in 2013; 4 in 2014; and 5 in 2015, for a total of 12 incidents.

2015 volumes are still roughly twice the volumes seen in 2012, and EIA predicts U.S. crude oil production volumes to remain high for the next decade and beyond. As a result, we expect volumes going forward to remain relatively high by historic (pre-2012) standards, although we examine a modest decline in production and rail shipment volume in the sensitivity analysis of the draft RIA.

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[57] *https://hazmatonline.phmsa.dot.gov/IncidentReportsSearch/IncrSearch.aspx.*

One simple way to predict the number of future events based on the HHFT period is as follows: The period of high volume crude shipments starts in 2012 through 2015, providing a 4-year period. We consider a 10-year analysis period going forward, so the analysis period is 2.5 times longer than the observed period. There were 12 incidents in the observed period, so the predicted number of events over the analysis period would be 12 × 2.5 = 30 incidents. We note that 2012 volumes were much lower than subsequent years, so treating it as a full year results in a conservative estimate of the number of events. Evidence for this can be seen in the data, as all 12 events occurred in 2013–2015, with 4 occurring in 2014 and 5 occurring in 2015. 2013 had 3 HHFT derailments, meeting the 4 year average. 2012 is the only year in the analysis period with fewer than 3 derailments.

To monetize the damages associated with these incidents, PHMSA assumes an equal chance of an incident occurring in any year of the 10 year analysis period. Given 30 events, this assumption means the expected number of events in any given year is 3. Based on the 12 events for which data reporting is reasonably complete, PHMSA estimated that, on average, 140,173 gallons of product are released per crude oil HHFT derailment. In final rule HM–251, the Agency used $200 per gallon to monetize the damages of an incident that results in a spill.[58] That figure is based on the cost per gallon from recent pipeline events and a literature review and data analysis conducted for both crude and ethanol. Since this rule focuses on petroleum oil only (and not ethanol), a slightly different value is applied. We use a value of $211 to estimate baseline damages associated with train derailment releases. (See the draft RIA for this proposed rulemaking, in section 3.1.4, for further discussion of how this cost per gallon figure was derived.)

Table 15 below presents the estimated societal damages associated with HHFT incidents involving crude oil over the 10-year analysis period. The monetary value is obtained by multiplying the expected number of events in a year (3) by the cost per gallon released ($211) and the average release quantity (140,173). In addition, we adjust this baseline for the implementation of final rule HM–251, which codified new tank car standards for HHFTs and is expected to reduce the societal damages imposed by these incidents by 40 percent once fully implemented. Since this proposed rule will be finalized before implementation of final rule HM–251 is complete (*i.e.* full phase in of retrofitted tank cars and Electronically Controlled Pneumatic Braking), we apply the final rule HM–251 effectiveness rates for the years 2017–2026 to adjust for the impact of that rule on baseline damages. Societal damage values discounted at 3 and 7 percent are also presented.

TABLE 15—SUMMARY OF ESTIMATED SOCIETAL DAMAGES FROM CRUDE OIL HHFT INCIDENTS

Year	Events per year	Monetized value [1]	HHFT effectiveness (percent)	Adjusted monetized value
1	3	$88,729,245	22	$69,030,780
2	3	88,729,245	28	63,774,491
3	3	88,729,245	34	58,717,940
4	3	88,729,245	36	56,486,231
5	3	88,729,245	38	54,802,306
6	3	88,729,245	38	55,154,097
7	3	88,729,245	38	55,196,048
8	3	88,729,245	38	55,288,413
9	3	88,729,245	38	55,211,463
10	3	88,729,245	38	55,211,463
				578,873,232
			7% discount	440,537,002
			3% discount	511,335,291

[1] Calculated by multiplying 140,173 (estimate of gallons released per event) times $211 (estimate of societal cost per gallon released) times 3 (estimate of events per year).

Although the Agency cannot estimate the degree to which comprehensive OSRP requirements would reduce the consequences of these events, it is clear by comparing the monetized damages with the total costs of the proposed rule that even a minor reduction in damages would result in a rule with positive net benefits. For example, estimated costs as presented in Table 3 above are approximately 4.9 percent of total societal damages, indicating that if this proposed rule reduced the consequences of these events by 5 percent, the rule would have positive net benefits.

Comprehensive plans require training and exercises, staging of equipment, analysis of routes and access points along routes as part of the development of response zone appendices, and pre-establishing of a chain of command and communication protocols, which would likely result in much faster and more effective response to derailments involving large quantities of petroleum oil. As a result, we expect the spilled product would be contained and recaptured more effectively, a smaller area would be contaminated, fewer environmental consequences would result, and less property would be damaged. For example, a better executed response to an incident that contaminates a river might ensure quicker deployment of downriver booms, thereby reducing the amount of shoreline oiling, damage to riparian environments, and impairment of downstream sources of drinking water. The Agency believes that training, better coordinated resource deployment, more clearly delineated communication protocols and command structure, and pre-event contracting of response resources will substantially reduce the impacts of these incidents, and as a result the rule is likely to be cost-justified.

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[58] For detail on how this value was derived from PHMSA pipeline data, the reader is referred to pages 85–90 of the HM–251 RIA located in Docket No. PHMSA–2012–0082 (HM–251).

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. This NPRM does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $155 million or more, adjusted for inflation, to either State, local, or tribal governments, in the aggregate, or to the private sector in any one year, and is the least burdensome alternative that achieves the objective of the rule. As such, PHMSA has concluded that the NPRM does not require an Unfunded Mandates Act analysis.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”) and the President's memorandum on “Preemption” published in the **Federal Register** on May 22, 2009 (74 FR 24693). Executive Order 13132 requires PHMSA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the executive order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments or the agency consults with state and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts state law, the agency, where practicable, seeks to consult with state and local officials in the process of developing the regulation.

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. PHMSA has determined that the proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule proposes to update the existing 49 CFR part 130 by lowering the applicability threshold and providing more detailed guidelines for comprehensive oil spill response planning. It further proposes to require railroads to share additional information with state and tribal emergency response organizations, and proposes to incorporate by reference an initial boiling point test for flammable liquids as an acceptable testing alternative. The proposed rule does not impose any new requirements with effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among government entities. In addition, PHMSA has determined that this proposed rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Hazardous Materials Transportation Act (HMTA) provides that a state law or Indian tribe requirement is preempted where compliance with both the state law or Indian tribe requirement and the federal requirement is not possible, the state law or Indian tribe requirement creates an obstacle to accomplishing or executing the federal requirement, or where a federal requirement has covered the subject and the state law or Indian requirement is not substantively the same. Covered subjects under the HMTA include: (1) The designation, description, and classification of hazardous material; (2) the packing, repacking, handling, labeling, marking, and placarding of hazardous material; (3) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents; (4) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material and other written hazardous materials transportation incident reporting involving state or local emergency responders in the initial response to the incident; and (5) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce. Under the Federal Railroad Safety Act, “[l]aws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable.” With narrow exceptions for essentially local safety or security hazards, states may not “adopt or continue in force a law, regulation, or order related to railroad safety” once the “Secretary of Transportation . . . prescribes a regulation or issues an order covering the subject matter of the State requirement.” 33 U.S.C. 20106(a)(2). This standard applies to federal regulations governing the transportation of hazardous materials by railroad, even where PHMSA or another agency promulgates those regulations.

Comments to the ANPRM from the concerned public and departments within city and State governments highlight state legislation related to oil spill response plans and request that PHMSA discuss the preemptive effects of the changes to part 130 in this proposed rule. Part 130 is issued under authority of 33 U.S.C. 1321(o)(1)(C) and 1321(j)(5).

Regarding the proposed changes to 49 CFR part 130, federal regulation under 33 U.S.C. 1321 accommodates regulation by states and political subdivisions concerning oil spill response plans. See 33 U.S.C. 1321(o)(2). However, the preemption language of 33 U.S.C. 1321 preserves only the ability for states to impose oil spill planning requirements. Elements of state oil spill response plan legislation may be preempted under the preemption standard established by the FRSA and the HMTA. Accordingly, the preemption provision of the FRSA and the HMTA may apply to any state-imposed requirements on railroad safety or hazardous materials containment. Nonetheless, PHMSA has determined that this proposed rule will not impose substantial direct compliance costs on State and local governments.

PHMSA solicits comment on this Federalism discussion.

D. Executive Order 13175

Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”) requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that have tribal implications. Thus, in complying with this Executive Order, agencies must determine whether a proposed rulemaking has tribal implications, which include any rulemaking that imposes “substantial direct effects” on one or more Indian communities, on the relationship between the Federal Government and Indian tribes, or on the distribution of power between the Federal Government and Indian tribes. Further, to the extent practicable and permitted by law, agencies cannot promulgate two types of rules unless they meet certain conditions. The two types of rules are: (1) Rules that have tribal implications that impose substantial direct compliance costs on Indian tribal governments and that are not required by statute; and (2) rules that have tribal implications and that preempt tribal law.

PHMSA is committed to tribal outreach and engaging tribal governments in dialogue. Among other outreach efforts, PHMSA representatives attended the National Joint Tribal Emergency Management Conference on August 11–14, 2015 and the Northwest Tribal Emergency Management Conference in May 4–6, 2016. In the spirit of Executive Order 13175 and consistent with DOT Order 5301.1, PHMSA will be continuing outreach to tribal officials independent of our assessment of the direct tribal implications.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

Under the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*), PHMSA must consider whether a rulemaking would have a "significant economic impact on a substantial number of small entities," which include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.

To ensure potential impacts of rules on small entities are properly considered, PHMSA in coordination with the FRA, developed this NPRM in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the RFA.

The RFA and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

PHMSA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the requirements in this NPRM. PHMSA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. PHMSA will consider all information and comments received in the public comment process when making a determination regarding the economic impact on small entities in the final rule.

Under the RFA at 5 U.S.C. 603(b), each initial regulatory flexibility analysis is required to address the following topics:

(1) The reasons why the agency is considering the action.

(2) The objectives and legal basis for the proposed rule.

(3) The kind and number of small entities to which the proposed rule will apply.

(4) The projected reporting, recordkeeping and other compliance requirements of the proposed rule.

(5) All Federal rules that may duplicate, overlap, or conflict with the proposed rule.

The RFA at 5 U.S.C. 603(c) requires that each initial regulatory flexibility analysis contains a description of any significant alternatives to the proposal that accomplish the statutory objectives and minimize the significant economic impact of the proposal on small entities. In this instance, none of the alternatives accomplish the statutory objectives and minimize the significant economic impact of the proposal on small entities.

(1) Reasons Why the Agency Is Considering the Action

PHMSA, in coordination with the FRA, is issuing this NPRM in order to improve response readiness and mitigate effects of rail incidents involving petroleum oil and certain HHFTs. This is necessary due to the expansion in U.S. energy production, which has led to significant challenges for the country's transportation system. This NPRM has requirements in two areas as shown below: Section I, Subsection A ("Oil Spill Response Plans") and Subsection B ("Information Sharing").[59] The first requirement proposes to modernize the Comprehensive Spill Plan requirements (49 CFR part 130). Additionally, this NPRM proposes to require railroads to share additional information with state and tribal emergency response organizations (*i.e.,* SERCs and TERCs) to improve community preparedness. The proposals in this NPRM work in conjunction with the requirements adopted in the HHFT Final Rule in order to continue the comprehensive approach toward ensuring the safe transportation of energy products and mitigating the consequences of such accidents should they occur. PHMSA is addressing below the potential impacts on small entities with the proposed rule requirements for response plans and information sharing.[60]

(A) Oil Spill Response Plans

PHMSA is promulgating this NPRM in response to recent train accidents involving the derailment of HHFTs. Shipments of large volumes of liquid petroleum oil pose a significant risk to life, property, and the environment. PHMSA has identified several recent derailments to illustrate the circumstances and consequences of derailments involving petroleum oil transported in higher-risk train configurations: Heimdal, ND (May 2015); Galena, IL (March 2015); Mt. Carbon, WV (February 2015); La Salle, CO (May 2014); Lynchburg, VA (April 2014); Vandergrift, PA (February 2014); New Augusta, MS (January 2014); Casselton, ND (December 2013); Aliceville, AL (November 2013); and Parkers Prairie, MN (March 2013).

For example, on December 30, 2013, a train carrying crude oil derailed and ignited near Casselton, North Dakota, prompting authorities to issue a voluntary evacuation of the city and surrounding area. On November 7, 2013, a train carrying crude oil to the Gulf Coast from North Dakota derailed in Aliceville, Alabama, spilling crude oil in a nearby wetland and igniting into flames. These train accidents involving derailments of HHFTs transporting crude oil resulted in discharges of petroleum oil that harmed or posed a threat of harm to the nation's waterways.

Of note here is the NTSB's Safety Recommendation R–14–5,[61] which requested that PHMSA revise the spill response planning thresholds prescribed in 49 CFR part 130 to require comprehensive OSRPs that effectively provide for the carriers' ability to respond to worst-case discharges resulting from accidents involving unit trains or blocks of tank cars transporting oil and petroleum products. In this recommendation, the NTSB raised a concern that, "[b]ecause there is no mandate for railroads to develop comprehensive plans or ensure the availability of necessary response resources, carriers have effectively placed the burden of remediating the environmental consequences of an accident on local communities along their routes." In light of these accidents and NTSB Recommendation R–14–5, PHMSA is now re-examining whether it is more appropriate to consider the train in its entirety when setting the threshold for comprehensive OSRPs. The revisions included in the NPRM were developed to expand the applicability of the comprehensive OSRP requirement. PHMSA holds that improved oil spill response planning will in turn improve the actual response to future derailments involving petroleum oil and lessen the negative impacts to the environment and communities.

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[59] This rulemaking also proposes incorporation and the voluntary use of the initial boiling point (IBP) test (ASTM D7900) to determine classification and packing group for Class 3 Flammable liquids. We note that the incorporation of API RP 3000 and consequently ASTM D7900 will not replace the currently authorized testing methods, rather serve as a testing alternative if one chooses to use that method. PHMSA believes this provides flexibility and promotes enhanced safety in transport through accurate PG assignment. This provision would not pose any impacts on small entities.

[60] We note that the incorporation of API RP 3000, which contains the ASTM D7900 test will not replace the currently authorized initial boiling point testing methods, but rather serve as a testing alternative if one chooses to use that method. PHMSA believes this provides flexibility and promotes enhanced safety in transport through accurate packing group assignment. This requirement will impose no new costs.

[61] *http://www.ntsb.gov/safety/safety-recs/recletters/R-14-004-006.pdf.*

On June 17, 1996, RSPA published a final rule issuing requirements that meet the intent of the Clean Water Act. This rule adopted requirements for packaging, communication, spill response planning, and response plan implementation intended to prevent and contain spills of oil during transportation. Under these current requirements, railroads are required to complete a basic OSRP for oil shipments in a package with a capacity of 3,500 gallons or more, and a comprehensive OSRP is required for oil shipments in a package containing more than 42,000 gallons (1,000 barrels).

Currently, most, if not all, of the rail community transporting oil, including crude oil transported as a hazardous material, is subject to the basic OSRP requirement of 49 CFR 130.31(a) since most, if not all, rail tank cars being used to transport crude oil have a capacity greater than 3,500 gallons. However, a comprehensive OSRP for shipment of oil is only required when the quantity of oil is greater than 42,000 gallons per tank car. Accordingly, the number of railroads required to have a comprehensive OSRP is much lower, or possibly non-existent, because a very limited number of rail tank cars in use would be able to transport a volume of 42,000 gallons in a car.[62]

The proposed rule expands the applicability of comprehensive OSRPs based on thresholds of crude oil that apply to an entire train consist. Specifically, the proposed rule would expand the applicability for OSRPs so that no person may transport a HHFT quantity of liquid petroleum oil unless that person has implemented a comprehensive OSRP.

Each railroad subject to the proposed rule must prepare and submit a comprehensive OSRP that includes a plan for responding, to the maximum extent practicable, to a worst-case discharge and to a substantial threat of such a discharge of oil. The OSRP must also be submitted to the FRA, where it will be reviewed and approved by FRA personnel.

(B) Information Sharing

On May 7, 2014, DOT issued Emergency Restriction/Prohibition Order in Docket No. DOT–OST–2014–0067,[63] which required each railroad transporting 1,000,000 gallons or more of Bakken crude oil in a single train in commerce within the U.S. to provide certain information in writing to the SERC for each state in which it operates such a train. In the HM–251 (RIN 2137–AE91) NPRM published last year (79 FR 45015; Aug. 1, 2014), PHMSA proposed to codify and clarify the requirements of the Order in the HMR and requested public comment on the various facets of that proposal. Unlike many other requirements in the August 1, 2014 NPRM, the notification requirements were specific to a single train that contains one million gallons or more of UN 1267, Petroleum crude oil, Class 3, sourced from the Bakken shale. In the HHFT Final Rule, PHMSA did not adopt the separate notification requirements proposed in the NPRM and instead relied on the expansion of the existing route analysis and consultation requirements of § 172.820 to include HHFTs to satisfy information sharing needs.

Based on all the intense interests and issues revolving around information sharing, we are proposing in this HM–251B NPRM to add § 174.312 to add a new information sharing provisions to the additional safety and security planning requirements for transportation by rail. This proposed addition will create a tiered approach to information sharing, whereas fusion centers will continue to act as the focal point for risk analysis information deemed SSI and SERCs and TERCs will actively be provided with non-sensitive security information that can aid in emergency preparedness and community awareness. The proposed requirements provide emergency responders with an integrated approach to receiving information about HHFTs.

(2) The Objectives and Legal Basis for the Proposed Rule

PHMSA is addressing below the two requirement areas in this proposed rule, Oil Spill Response Plans and Information Sharing.

(A) Oil Spill Response Plans

PHMSA, in coordination with FRA, is issuing this NPRM in order to improve response readiness and mitigate effects of rail incidents involving petroleum crude oil transported in HHFTs. The proposed rule is necessary due to the expansion in U.S. energy production, which has led to significant challenges for the country's transportation system. This rule proposes to modernize the OSRP requirements in 49 CFR part 130. This NPRM adjusts the applicability for comprehensive oil spill response plans and clarifies the comprehensive plan requirements. Additionally, this rulemaking proposes to restructure and clarify the requirements of the comprehensive oil spill response plan. The proposed changes respond to commenter requests for requirements for more detailed guidance and provide a better parallel to other federal oil spill response plan regulations promulgated under the OPA 90 authority. A full summary of the changes to the plan requirements are described in the NPRM. Each comprehensive plan must include:[64]

I. Core Plan: A core plan includes an information summary, as proposed in 49 CFR 130.104(a)(2), and any components which do not change between response zones. Each plan must:

- Describe the railroad's response management system, including the functional areas of finance, logistics, operations, planning, and command.
- Demonstrate that the railroad's response management system uses common terminology (*e.g.,* the National Incident Management System) and has a manageable span of control, a clearly defined chain of command, and

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[62] The 2014 AAR's Universal Machine Language Equipment Register numbers showed five tank cars listed with a capacity equal to or greater than 42,000 gallons, and none of these cars were being used to transport oil or petroleum products.

[63] *http://www.dot.gov/briefing-room/emergency-order.*

[64] The following text is provided as an overview of the rule and does not replace regulatory text included in the NPRM.

sufficiently trained personnel to fill each position.

- Include an information summary as required by § 130.104.
- Certify that the railroad reviewed the National Contingency Plan (NCP) and each applicable Area Contingency Plan (ACP) and that its response plan is consistent with the NCP and each applicable ACP and follows Immediate Notification procedures, as required by § 130.103.
- Include notification procedures and a list of contacts as required in § 130.105.
- Include spill detection and mitigation procedures as required in § 130.106.
- Include response activities and resources as required in § 130.106.
- Certify that applicable employees were trained per § 130.107.
- Describe procedures to ensure equipment testing and a description of the drill program per § 130.108.
- Describe plan review and update procedures per § 130.109.
- Submit the plan as required by § 130.111.

II. Response Zone Appendix: For reach response zone, a railroad must include a response zone appendix to provide the information summary, as proposed in 49 CFR 130.107(b), and any additional components of the plan specific to the response zones. Each response zone appendix must identify:

- A description of the response zone, including county(s) and state(s);
- A list of route sections contained in the response zone, identified by railroad milepost or other designation determined by the railroad;
- Identification of any environmentally sensitive areas per route section; and
- Identification of the location where the response organization will deploy and the location and description of equipment required by § 130.106(c)(6).

In addition, the proposed rule would require plan holders to identify an OSRO, provided through a contract or other approved means, to respond to a worst-case discharge to the maximum extent practicable within 12 hours.

(B) Information Sharing

In HM–251B NPRM, we are proposing to add to § 174.312 to add new information sharing provisions to the additional safety and security planning requirements for transportation by rail. The proposed requirements provide emergency responders with an integrated approach to receiving information about HHFTs. As proposed, § 174.312 will require a rail carrier of an HHFT to provide a monthly notification to the SERC, TERC, or other appropriate state delegated entities in which it operates. As proposed the notification must meet the following requirements:

- A reasonable estimate of the number of HHFT that the railroad expects to operate each week, through each county within the State or through each tribal jurisdiction;
- The routes over which the HHFTs will operate;
- A description of the hazardous material being transported and all applicable emergency response information required by subparts C and G of part 172 of this subchapter;
- An HHFT point of contact: at least one point of contact at the railroad (including name, title, phone number and address) related to the railroad's transportation of affected trains;
- If a route is additionally subject to the comprehensive spill plan requirements, the notification must include a description of the response zones (including counties and states) and contact information for the qualified individual and alternate, as specified under § 130.104(a);
- On a monthly basis railroads must update the notifications. If there are no changes, the railroad may provide a certification of no change.
- Notifications and updates may be transmitted electronically or by hard copy.
- Each point of contact must be clearly identified by name or title and role (*e.g.* qualified individual, HHFT point of contact) in association with the telephone number. One point of contact may fulfill multiple roles.
- Copies of HHFT notifications made must be made available to the Department of Transportation upon request.

The proposed changes build upon the requirements adopted in HHFT Final Rule to continue to the comprehensive approach to ensuring the safe transportation of energy products.

The Secretary has the authority to prescribe regulations for the safe transportation, including the security, of hazardous materials in intrastate, interstate, and foreign commerce (49 U.S.C. 5103(b)) and has delegated this authority to PHMSA via 49 CFR 1.97(b).

(3) A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The universe of the entities considered in an IRFA generally includes only those small entities that can reasonably expect to be directly regulated by the regulatory action. Small railroads are the types of small entities potentially affected by this proposed rule.

A "small entity" is defined in 5 U.S.C. 601(3) as having the same meaning as "small business concern" under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Title 49 U.S.C. 601(4) likewise includes within the definition of small entities non-profit enterprises that are independently owned and operated, and are not dominant in their field of operation.

The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a "for-profit" railroad business firm may be, and still be classified as a small entity, is 1,500 employees for "line haul operating railroads" and 500 employees for "switching and terminal establishments." Additionally, 5 U.S.C. 601(5) defines as small entities governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final Statement of Agency Policy that formally establishes small entities or small businesses as being railroads, contractors, and hazardous materials offerors that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues,[65] and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891 (May 9, 2003) (codified as appendix C to 49 CFR part 209). The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. PHMSA is using this definition for the rulemaking.

Railroads

Not all small railroads would be required to comply with the provisions of this rule. Most of the approximately 738 small railroads that operate in the United States do not transport hazardous materials. Based on the requirements of this proposed rule, the entities potentially affected by requirement are as described below:

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[65] For 2012 the Surface Transportation Board (STB) adjusted this amount to $36.2 million.

(A) Oil Spill Response Plans

For determining the entities that would be affected by the requirements proposed in this rulemaking, PHMSA used the definition of "HHFT" established in the HHFT Final Rule.[66] Based on an evaluation of the 2013 Waybill Sample data and consultation with FRA, PHMSA estimated that 55 small railroads could potentially be affected by this proposed rule as they transport crude oil in HHFTs. Therefore, this proposed rule would impact 7.5 percent of the universe of 738 small railroads.

(B) Information Sharing

The applicability of this requirement is derived from the information published in the HHFT Final Rule. Specifically, the definition of a High-Hazard Flammable Train and the information sharing portion of the routing requirements are related to this NPRM. The HHFT Final Rule defined "High-Hazard Flammable Train" as a continuous block of 20 or more tank cars in a single train or 35 or more cars dispersed through a train loaded with a flammable liquid.

This definition also served as the applicable threshold of many of the requirements in the HHFT rulemaking, including routing requirements. Section 172.820 prescribes additional safety and security planning requirements for transportation by rail. In the HHFT Final Rule, the applicability for routing requirements in § 172.820 were revised to require that any rail carrier transporting an HHFT comply with the additional safety and security planning requirements for transportation by rail. The routing requirements adopted in the HHFT Final Rule are related to this NPRM, as the proposed requirements will create a tiered approach to information sharing; whereas fusion centers will continue to act as the focal point for risk analysis information deemed SSI in § 172.820, SERCs and TERCs will actively be provided with non-sensitive security information in a monthly HHFT notification that can aid in emergency preparedness and community awareness in § 174.312.

The universe of affected entities for the information sharing requirements is different than the number of entities affected under the comprehensive response plan requirement. The applicability of this requirement is derived from the information published in the HHFT Final Rule. Specifically, the definition of an HHFT and the information sharing portion of the routing requirements are related to this NPRM. The number of small entities impacted under this requirement is different from the number of entities impacted under the comprehensive OSRP requirement due to the different applicability of these two requirements. In particular, the comprehensive OSRP requirement applies to HHFTs transporting crude oil (and potentially other petroleum oils), while the information sharing requirement applies to HHFTs transporting both crude oil and ethanol (and potentially other Class 3 flammable liquids). As described under the impact on the small entities section with the routing requirements in the HHFT Final Rule, there are 160 affected small entities under the routing requirements. Thus, the proposed requirement in this NPRM could potentially affect 160 small railroads transporting flammable liquids in HHFTs. Therefore, this proposed rule would impact 22 percent of the universe of 738 small railroads.

(4) A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule

For a thorough presentation of cost estimates, please refer to the draft RIA, which has been placed in the docket for this rulemaking. PHMSA is addressing below the two requirements areas in this proposed rule, Oil Spill Response Plans and Information Sharing.

(A) Oil Spill Response Plans

This rule proposes to modernize the requirements by changing the applicability for comprehensive oil spill response plans and clarifying the comprehensive plan requirements. The proposed rule expands the applicability of comprehensive OSRPs to railroads transporting a single train of 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist. These railroads, that are currently required to develop a basic plan, would now be required to develop a comprehensive plan.

PHMSA describes below the impact on the small railroads that would be required under the proposed alternative which any railroad carrying 20 or more tank cars of liquid petroleum oil in a continuous block or 35 such cars on a single train to submit a comprehensive OSRP. The total cost estimate with the proposed requirements for small railroads in the proposed alternative is conservative, when compared to the cost estimates of the other several alternatives evaluated by PHMSA. PHMSA evaluated several alternatives related to the threshold values for the universe of affected entities that would be required to submit a comprehensive response plan.[67] For additional information about the development of these cost estimates, the specific differences between a basic and comprehensive OSRP including the estimated cost per railroad by railroad class please refer to the draft RIA, which has been placed in the docket for this rulemaking. For determining the entities that would be affected by the proposed threshold, PHMSA used the definition HHFT from the HHFT Final Rule.[68] PHMSA narrowed the affected entities to only include railroads that transported crude oil and, in consultation with FRA, revised the estimated number of Class III carriers that would be subject to the rulemaking. Based on this assessment, PHMSA estimates there are 73 railroads (7 Class I, 11 Class II, and 55 Class III) that would be subject to this proposed rulemaking. PHMSA specifically requests comment on the approach and estimated values used in this analysis. Each comprehensive plan must include:

I. Core Plan: A core plan includes an information summary, as proposed in 49 CFR 130.104(a)(1), and any components which do not change between response zones.

II. Response Zone Appendix: For reach response zone, a railroad must include a response zone appendix to provide the information summary, as proposed in § 130.107(a)(2), and any additional components of the plan specific to the response zones.

In addition, the proposed rule would require plan holders to identify an OSRO, provided through a contract or other approved means, to respond to a worst-case discharge to the maximum extent practicable within 12 hours.

PHMSA has identified several categories of costs related to the development and implementation of a comprehensive response plan. Those costs include the following: plan development, submission, and maintenance; contract fees for designating an OSRO; training and drills; and plan review and approval. For additional information about the development of these cost estimates, please refer to the draft RIA, which has been placed in the docket for this rulemaking.

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[66] 80 FR 26643, pp 26643–26750. May 8, 2015.

[67] Under each of these alternatives, the number of Class I and Class II railroads affected by the proposed thresholds does not change. However, the number of Class III railroads that would be subject to the proposed rule ranges from 55 to 20 railroads. Based on evaluation of the 2013 Waybill Sample data and in consultation with the FRA, PHMSA determined that 55 small railroads is the largest number of small railroads that is subject to the proposed option requirements. Please, refer to the draft RIA for additional information regarding the number of impacted entities under the other several alternatives.

[68] 80 FR 26643, pp 26643–26750. May 8, 2015.

As noted in section 3 of this IRFA, approximately 55 small railroads carry crude oil in train consists large enough that they would potentially be affected by this rule.

PHMSA considers the average annual cost per railroad relevant for the purposes of this analysis instead of presenting first year and subsequent year cost per railroad due to the nature of frequency of requirements with the development of a comprehensive plan, which varies between annual and every five years. The total undiscounted cost with the plan for the small railroads is $14,595,175 over the ten year period of the analysis. PHMSA estimates the total cost to each small railroad to be $37,613 in the first year and an annual average cost of $25,306 in subsequent years taking into account the costs growing with increases in real wages.[69] Small railroads have annual operating revenues that range from $3 million to $20 million. Previously, FRA sampled small railroads and found that revenue averaged approximately $4.7 million (not discounted) in 2006. One percent of average annual revenue per small railroad is $47,000. Thus, the costs associated with this requirement amount to less than one percent of the railroad's annual operating revenue. PHMSA realizes that some small railroads will have lower annual revenue than $4.7 million. However, PHMSA is confident that this estimate of total cost per small railroad provides a good representation of the cost applicable to small railroads, in general.

In conclusion, PHMSA believes that although some small railroads will be directly impacted, the impact will amount to less than one percent of an average small railroad's annual operating revenue.

(B) Information Sharing

Based on all industry interests and issues revolving around information sharing, in this NPRM we are proposing to add new information sharing provisions to the additional safety and security planning requirements for transportation by rail in a new § 174.312. As discussed previously, § 172.820(g) provides the requirements for rail carrier point of contact on routing issues for SSI. In this NPRM, we are proposing to add § 174.312 to add additional information sharing requirements. As proposed, a rail carrier of a HHFT as defined in § 171.8 of this subchapter must provide the following notification to SERC, TERC, or other appropriate state delegated entities in which it operates. As proposed, information required to be shared must consist of the following:

- A reasonable estimate of the number of affected HHFTs that are expected to travel, per week, through each county within the state.
- The routes over which the affected trains will be transported.
- A description of the materials shipped and applicable emergency response information required by subparts C and G of part 172 of this subchapter.
- At least one point of contact at the railroad (including name, title, phone number and address) responsible for serving as the point of contact for the SERC, TERC, and relevant emergency responders related to the railroad's transportation of affected trains.
- The information summary elements (*e.g.* response zone description and contact information for qualified individuals) for the comprehensive oil spill response plan required by § 130.104(a), when applicable.
- Railroads must update notifications made under section 174.312 on a monthly basis.
- Copies of railroad notifications made under section 174.312 of this section must be made available to DOT upon request.

Approximately 160 small railroads carry crude oil and ethanol in train consists large enough that they would potentially be affected by this rule.

PHMSA estimates the total cost of information sharing to each small railroad to be $7,589 in the first year and $2,319 for subsequent years, with costs growing with increases in real wages.[70] Small railroads' annual operating revenues range from $3 million to $20 million. Previously, FRA sampled small railroads and found that revenue averaged approximately $4.7 million (not discounted) in 2006. One percent of average annual revenue per small railroad is $47,000. Thus, the costs associated with this rule amount to less than one percent of the railroad's annual operating revenue. PHMSA realizes that some small railroads will have lower annual revenue than $4.7 million. However, PHMSA is confident that this estimate of total cost per small railroad provides a good representation of the cost applicable to small railroads, in general.

Total Burden on Small Entities

Table 16 provides the total burden on small railroads with the comprehensive OSRP and information sharing requirements:

TABLE 16—SUMMARY UNDISCOUNTED ANNUAL BURDEN ON CLASS III RAILROADS

Requirement area	Number of impacted small railroads	Year 1 cost per small railroad—undiscounted	Average annual cost in subsequent years per small railroad—undiscounted
Oil Spill Response Plans	55	$37,613	$25,306
Information Sharing	160	7,589	2,319
Total burden per small railroad ($)		45,202	27,625

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[69] Costs per railroad are derived in the draft RIA, with costs for all Class III railroads divided by the 55 impacted railroads. The Year 1 total costs are calculated at $2,068,728. The estimated Year 1 cost per railroad is then calculated at $37,613 = $2,068,728/55 small railroads. The average annual cost for the subsequent years is calculated at $1,391,827.4 = $12,526,448/9 years. The estimated average annual cost per small railroad for the subsequent years is then calculated at $25,306 = $1,391,827.4/55 small railroads.

[70] Please refer to the draft RIA for full description on how these costs per railroad are derived.

In conclusion, PHMSA believes that although some small railroads will be directly impacted, the impact will amount to less than one percent of an average small railroad's annual operating revenue.

This proposed rule will not have a noticeable impact on the competitive position of the affected small railroads or on the small entity segment of the railroad industry as a whole. The small entity segment of the railroad industry faces little in the way of intramodal competition. Small railroads generally serve as "feeders" to the larger railroads, collecting carloads in smaller numbers and at lower densities than would be economical for the larger railroads. They transport those cars over relatively short distances and then turn them over to the larger systems, which transport them relatively long distances to their ultimate destination, or for handoff back to a smaller railroad for final delivery. Although their relative interests do not always coincide, the relationship between the large and small entity segments of the railroad industry is more supportive and co-dependent than competitive.

It is also rare for small railroads to compete with each other. As mentioned above, small railroads generally serve smaller, lower density markets and customers. They tend to operate in markets where there is not enough traffic to attract or sustain rail competition, large or small. Given the significant capital investment required (to acquire right-of-way, build track, purchase fleet, etc.), new entry in the railroad industry is not a common occurrence. Thus, even to the extent the proposed rule may have an economic impact, it should have no impact on the intramodal competitive position of small railroads.

In the NPRM, PHMSA seeks information and comments from the industry that might assist in quantifying the number of small offerors who may be economically impacted by the requirements set forth in the proposed rule.

(5) An Identification, to the Extent Practicable, of All Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

PHMSA is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. PHMSA will collaborate and coordinate with FRA to ensure that our actions are aligned to the greatest extent practicable. This proposed rule would support most other safety regulations for railroad operations. The proposals in this NPRM work in conjunction with the requirements adopted in the HHFT Final Rule to continue the comprehensive approach to ensuring the safe transportation of energy products, mitigate the consequences of such accidents should they occur.

PHMSA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the proposals in this NPRM. PHMSA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. PHMSA will consider all comments received in the public comment process when making a determination in the final RFA.

F. Paperwork Reduction Act

PHMSA will request a revision to the information collection from the Office of Management and Budget (OMB) under OMB Control No. 2137–0682, entitled "Flammable Hazardous Materials by Rail Transportation." This NPRM may result in an increase in annual burden and costs under OMB Control No. 2137–0682 due to proposed requirements pertaining to the creation of oil spill response plans and notification requirements for the movement of flammable liquids by rail.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of Title 5 of the CFR requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This document identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule and specifically requests comments on the information collection and recordkeeping burdens associated with this NPRM.

Oil Spill Response Plans

PHMSA estimates that there will be approximately 73 respondents, based on a review of the number of railroad operators in existence that transport trains with 20 or more tank cars loaded with liquid petroleum oil in a continuous block or 35 or more tank cars loaded with liquid petroleum oil throughout the train. PHMSA estimates that it will take a rail operator 80 hours to produce a comprehensive oil spill response plan as proposed in this NPRM. In addition, the oil spill response plan will have an addendum for each response zone that the applicable trains pass through. It is estimated this addendum will take 15 hours per response zone. In addition, the oil comprehensive response plans will require annual maintenance as well. This annual maintenance is expected to take 20 hours for Class I railroads, 11 hours for Class II railroads, and 9.5 hours for Class III railroads. The hourly labor rate used to estimate the cost of initial plan development and its maintenance is $73.89. This labor rate is based on the median wage estimate from the Bureau of Labor Statistics (BLS) Occupational Employment and Wages, May 2014 for the wage series "11–1021 General and Operational Managers."

Initial Oil Spill Response Plan—Developed and Then Reviewed by the Railroad in Full Every 5 Years

There are 7 Class I railroads in existence that will be required to create a comprehensive oil spill response plan at 80 hours per plan resulting in 560 burden hours. Each Class I railroad is expected to have 8 response zones at 15 hours per response zone resulting in 840 burden hours. Combined this will result in a total of 1,400 burden hours Class I railroad oil spill response plans. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in a burden cost of $103,446.00.

There are 11 Class II railroads in existence that will be required to create a comprehensive oil spill response plan at 80 hours per response plan resulting in 880 burden hours. Each Class II railroad is expected to have 2 response zones at 15 hours per zone resulting in 330 burden hours. Combined this will result in a total of 1,210 burden Class II railroad oil spill response plans. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in a burden cost of $89,406.90.

There are 55 Class III railroads in existence that will be required to create a comprehensive oil spill response plan at 80 hours per response plan resulting in 4,400 burden hours. Each class III railroad is expected to pass through 1 response zones at 15 hours per zone resulting in 825 burden hours. Combined this will result in a total of 5,225 burden hours for Class III railroads oil spill response plans. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in a burden cost of $386,075.25.

The total annual burden hours for all oil spill response plans is 8,795 burden hours. The total burden cost is

$649,862.55. The review of a comprehensive plan is required every 5 years resulting in an annual burden of 1,567 hours per year and a total annual cost of $115,785.63.

Presented below is a summary of the numbers describe above:

Initial Oil Spill Response Plan—Developed and Then Reviewed By the Railroad in Full Every 5 Years

Class I—(7 Responses × 80 Hours per plan) + (7 responses × 8 Response Zones × 15 hours per zone) = 1,400 burden hours × $73.89 hourly rate = $103,446.00.

Class II—(11 Response × 80 Hours per plan) + (11 response × 2 Response Zones × 15 hours per zone) = 1,210 burden hours × $73.89 hourly rate = $89,406.90.

Class III—(55 Response × 80 Hours per plan) + (55 responses × 1 Response Zone × 15 hours per zone) = 5,225 burden hours × $73.89 hourly rate = $386,075.25.

Total Hours = 7,835/5 years = 1,567 Annual Burden Hours × $73.89 = $115,785.63 in Annual Cost.

Oil Spill Response Plan Maintenance—Done Annually

There are 7 Class I railroads in existence that will be required to annually maintain their oil spill response plan at 20 hours per plan resulting in 140 annual burden hours. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in an annual burden cost of $10,344.60.

There are 11 Class II railroads in existence that will be required to annually maintain their oil spill response plan at 11 hours per plan resulting in 121 annual burden hours. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in an annual burden cost of $8,940.69.

There are 55 Class III railroads in existence that will be required to annually maintain their oil spill response plan at 9.5 hours per plan resulting in 525.5 annual burden hours. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in an annual burden cost of $38,829.20

The sum of the total annual burden hours presented above is 783.5 burden hours.

Presented below is a summary of the numbers describe above:

Class I—7 Responses × 20 Hours per response = 140 annual burden hours × $73.89 = $10,344.60 annual burden cost.

Class II—11 Response × 11 Hours per response = 121 annual burden hours × $73.89 = $8,940.69 annual burden cost.

Class III—55 response × 9.5 hours per response = 522.5 annual burden hours × $73.89 = $386,075.25 annual burden cost.

Total Hours for Plan Maintenance = 783.5 Annual Burden Hours × $73.89 per hour = $57,892.81 annual burden cost.

Notifications to Emergency Response Commissions

For the creation of the initial HHFT information sharing notification PHMSA estimates that there will be approximately 178 respondents based on a review of the number of railroad operators shipping class 3 flammable liquids. PHMSA estimates that it will take a rail operator 30 hours to create initial notification plan for the State Emergency Response Commissions (SERCs), 30 hours to create initial notification plan for the Tribal Emergency Response Commissions (TERCs), and 15 hours to create the initial plan for other state delegated agencies.

Class I Railroads

PHMSA expects 7 responses (30 hours per response) resulting in 210 burden hours for SERC plans. PHMSA expects 7 responses (30 hours per response) resulting in 210 burden hours for TEPC plans. PHMSA expects 7 responses (15 hours per response) resulting in 105 burden hours for other state delegated agency plans. This will result in an initial one year total burden of 525 hours for Class I railroads. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in an annual burden cost of $38,792.25.

Class II Railroads

PHMSA expects 11 responses (30 hours per response) resulting in 330 burden hours for SERC plans. PHMSA expects 11 responses (30 hours per response) resulting in 330 burden hours for TERC plans. PHMSA expects 11 responses (15 hours per response) resulting in 115 burden hours for other state delegated agency plans. This will result in an initial one year total burden of 775 hours for Class II railroads. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in an annual burden cost of $57,264.75.

Class III Railroads

PHMSA expects 160 responses (30 hours per response) resulting in 4,800 burden hours for SERC plans. PHMSA expects 160 responses (30 hours per response) resulting in 4,800 burden hours for TERC plans. PHMSA expects 160 responses (15 hours per response) resulting in 2,400 burden hours for other state delegated agency plans. This will result in an initial one year total burden of 12,000 hours for Class III railroads. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in an annual burden cost of $886,680.00.

Initial plan creation (year one—one time)

Class I—7 responses × 30 hours for SERC plan = 210 burden hours
  7 responses × 30 hours for TERC plan = 210 burden hours
  7 responses × 15 hours for other state delegated agency plan = 105 burden hours
Class II—11 responses × 30 hours for SERC plan = 330 burden hours
  11 responses × 30 hours for TERC plan = 330 burden hours
  11 responses × 15 hours for other state delegated agency plan = 115 burden hours
Class III—160 responses × 30 hours for SERC plan = 4,800 burden hours
  160 responses × 30 hours for TERC plan = 4,800 burden hours
  160 responses × 15 hours for other state delegated agency plan = 2,400 burden hours

Total initial year burden = 13,300 burden hours/$982,737.00 burden cost.

For the maintenance of the notification plan PHMSA estimates that there will be approximately 178 respondents based on a review of the number of railroad operators shipping class 3 flammable liquids. PHMSA estimates that it will take a rail operator 12 hours to maintain notification plan for the SERCs, 12 hours to maintain notification plan for TERCs, and 6 hours to maintain the plan for other state delegated agencies.

Class I Railroads

PHMSA expects 7 responses (12 hours per response) resulting in 84 burden hours for SERC plans. PHMSA expects 7 responses (12 hours per response) resulting in 84 burden hours for TERC plans. PHMSA expects 7 responses (6 hours per response) resulting in 42 burden hours for other state delegated agency plans. This will result in an annual total burden of 210 hours for Class I railroads. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in an annual burden cost of $15,516.90.

Class II Railroads

PHMSA expects 11 responses (12 hours per response) resulting in 132 burden hours for SERC plans. PHMSA expects 11 responses (12 hours per response) resulting in 132 burden hours for TERC plans. PHMSA expects 11 responses (6 hours per response) resulting in 66 burden hours for other state delegated agency plans. This will result in an initial one year total burden of 775 hours for Class II railroads. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in an annual burden cost of $57,264.75.

Class III Railroads

PHMSA expects 160 responses (12 hours per response) resulting in 1,920 burden hours for SERC plans. PHMSA expects 160 responses (12 hours per response) resulting in 1,920 burden hours for TERC plans. PHMSA expects 160 responses (6 hours per response) resulting in 960 burden hours for other state delegated agency plans. This will result in an initial one year total burden of 4,800 hours for Class III railroads. This task will be performed by an operations manager at an hourly wage of $73.89 resulting in an annual burden cost of $35,240.00.

Annual Maintenance

Class I—7 responses × 12 hours for SERC plan = 84 burden hours
  7 responses × 12 hours for TERC plan = 84 burden hours
  7 responses × 6 hours for other state delegated agency plan = 42 burden hours
Class II—11 responses × 12 hours for SERC plan = 132 burden hours
  11 responses × 12 hours for TERC plan = 132 burden hours
  11 responses × 6 hours for other state delegated agency plan = 66 burden hours
Class III—160 responses × 12 hours for SERC plan = 1,920 burden hours
  160 responses × 12 hours for TERC plan = 1,920 burden hours
  160 responses × 6 hours for other state delegated agency plan = 960 burden hours
Total annual maintenance burden 5,785/$427,021.65

Total Additional Burden

OMB No. 2137–0682: Flammable Hazardous Materials by Rail Transportation.

Additional One Year Annual Burden:

Additional Annual Number of Respondents: 178.

Additional Annual Responses: 1,127.

Additional Annual Burden Hours: 21,435.5.

Additional Annual Burden Cost: $1,583,437.09.

Additional Subsequent Year Burden:

Additional Annual Number of Respondents: 593.

Additional Annual Responses: 593.

Additional Annual Burden Hours: 8,135.5.

Additional Annual Burden Cost: $595,700.09.

Please direct your requests for a copy of the information collection to T. Glenn Foster or Steven Andrews, U.S. Department of Transportation, Pipeline & Hazardous Materials Safety Administration (PHMSA), East Building, Office of Hazardous Materials Standards (PHH–12), 1200 New Jersey Avenue Southeast, Washington DC, 20590, Telephone (202) 366–8553.

G. Environmental Assessment

PHMSA has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), as amended; the Council on Environmental Quality Regulations (CEQ) regulations implementing NEPA (40 CFR parts 1500–1508); the U.S. Department of Transportation (DOT) Order 5610.C (September 18, 1979, as amended on July 13, 1982 and July 30, 1985), entitled Procedures for Considering Environmental Impacts; and other pertinent environmental regulations, Executive Orders, statutes, and laws for consideration of environmental impacts of PHMSA actions. The agency relies on all authorities noted above to ensure that it actively incorporates environmental considerations into informed decision-making on all of its actions, including rulemaking. A "Draft Environmental Assessment" (Draft EA) and a draft "Finding of No Significant Impact" (FONSI) are available in the docket PHMSA–2014–0105 (HM–251B). PHMSA has concluded that this action would have a positive effect on the human and natural environments since these response plan and information requirements would mitigate environmental consequences of spills related to rail transport of certain hazardous materials by reducing the severity of incidents as follows:

Oil Spill Response Planning	• Improved Response Times. • Improved Communication/Defined Command Structure. • Better Access to Equipment. • Trained Responders.
Information Sharing	• Improved Communication. • Enhanced Preparedness.

A NEPA Environmental Checklist is available in the docket PHMSA–2014–0105 (HM–251B).

H. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comment from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* The electronic form of these written communications and comments can be searched by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). The DOT's complete Privacy Act Statement is available at *http://www.dot.gov/privacy.*

I. Statutory/Legal Authority for This Rulemaking

This NPRM is published under the authority of 33 U.S.C. 1321, The Federal Water Pollution Control Act (FWPCA), which directs the President to issue regulations requiring owners and operators of certain vessels and onshore and offshore oil facilities to develop, submit, update, and in some cases obtain approval of oil spill response plans. Executive Order 12777 delegated responsibility to the Secretary of Transportation for certain transportation-related facilities. The Secretary of Transportation delegated the authority to promulgate regulations to PHMSA and provides the FRA with approval authority for railroad ORSPs. A Memorandum of Understanding (MOU) between the DOT and EPA further establishes jurisdictional guidelines for implementing OPA (36 FR 24080). The proposed changes to part 130 in this rule address minimizing the impact of a discharge of oils into the navigable waters or adjoining shorelines.

This NPRM is also published under the authority of 49 U.S.C. 5103(b), The Federal hazardous materials transportation law, which authorizes the Secretary of Transportation to "prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce." The proposed changes in this rule to §§ 171.7, 173.121, and 174.312 address safety and security vulnerabilities regarding the transportation of hazardous materials in commerce. The requirements proposed in § 174.312 are also mandated by Public Law 114–94, commonly known as the Fixing America's Surface Transportation Act, or the "FAST" Act.

The Federal railroad safety laws, at 49 U.S.C. 20103, provide the Secretary of Transportation with authority over all areas of railroad transportation safety and the Secretary has delegated this authority to the FRA. *See* 49 CFR 1.89. Pursuant to its statutory authority, FRA promulgates and enforces a comprehensive regulatory program (49 CFR parts 200–244) addressing issues such as railroad track, signal systems, railroad communications, and rolling stock. The FRA inspects railroads and shippers for compliance with both FRA and PHMSA regulations.

J. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

K. Executive Order 13211

Executive Order 13211 ("Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"), published May 22, 2001 [66 FR 28355], requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advance NPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

PHMSA has evaluated this action in accordance with Executive Order 13211. See Section VIII, Subsection G ("Environmental Assessment") for a more thorough discussion of environmental impacts and the supply, distribution, or use of energy. PHMSA has determined that this action will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, PHMSA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

List of Subjects

49 CFR Part 130

Oil spill prevention and response.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Rail carriers, Reporting and recordkeeping requirements, Security measures.

In consideration of the foregoing, we propose to amend title 49, chapter I, as follows:

PART 130—OIL SPILL RESPONSE PLANS

■ 1. In part 130, revise the Table of Contents to read as follows:

Subpart A—Applicability and General Requirements

130.1 Purpose.
130.2 Scope.
130.3 General requirements.
130.5 Definitions.
130.11 Communication requirements.
130.21 Packaging requirements.

Subpart B—Basic Spill Response Plans

130.31 Basic spill response plans.
130.33 Basic response plan implementation.

Subpart C—Comprehensive Oil Spill Response Plans

130.101 Applicability for comprehensive plans.
130.102 General requirements for comprehensive plans.
130.103 National Contingency Plan (NCP) and Area Contingency Plan (ACP) compliance for comprehensive plans.
130.104 Information summary for comprehensive plans.
130.105 Notification procedures and contacts for comprehensive plans.
130.106 Response and mitigation activities for comprehensive plans.
130.107 Training procedures for comprehensive plans.
130.108 Equipment testing and drill procedures for comprehensive plans.
130.109 Recordkeeping and plan update procedures for comprehensive plans.
130.111 Submission and approval procedures for comprehensive plans.
130.112 Response plan implementation for comprehensive plans.

■ 2. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C 1321; 49 CFR 1.81 and 1.97.

■ 3. Add a heading for subpart A immediately before § 130.1 to read as follows:

Subpart A—Applicability and General Requirements

§ 130.2 [Amended]

■ 4. In § 130.2 amend paragraph (d) to remove "§ 130.31(b)" and add in its place "subpart C".

■ 5. In § 130.5:

■ a. The introductory text is amended to redesignate the definition for "animal fat" in alphabetical order.

■ b. The definitions for "Adverse Weather," "Environmentally Sensitive or Significant Areas," "Maximum Potential Discharge," "Oil Spill Response Organization," "On-scene Coordinator (OSC)," "Response activities," "Response Plan," and "Response Zone" are added in alphabetical order.

■ c. The definitions for "Liquid," "Person," "Petroleum Oil," and "Worst-case discharge" are revised.

The additions and revisions read as follows:

§ 130.5 Definitions.

In this subchapter:

Adverse weather means the weather conditions (*e.g.*, ice conditions, temperature ranges, flooding, strong winds) that will be considered when identifying response systems and equipment to be deployed in accordance with a response plan.

Animal fat means a non-petroleum oil, fat, or grease derived from animals, not specifically identified elsewhere in this part.

* * * * *

Environmentally sensitive or significant areas means areas that may be identified by their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

* * * * *

Liquid means a material that has a vertical flow of over two inches (50 mm) within a three-minute period, or a material having one gram or more liquid separation, when determined in accordance with the procedures specified in ASTM D 4359–84, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid," 1990 edition, which is incorporated by reference.

Note: This incorporation by reference has been approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Office of Hazardous Materials Safety, Standards and Rulemaking Division, DOT headquarters East Building, 1200 New Jersey Avenue SE., Washington, DC 20590, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

* * * * *

Maximum potential discharge means a planning volume for a discharge from a motor vehicle or rail car equal to the capacity of the cargo container.

* * * * *

Oil spill response organization (OSRO) means an entity that provides response resources.

On-scene Coordinator (OSC) means the Federal official pre-designated by the Administrator of the United States Environmental Protection Agency (EPA) or by the Commandant of the United States Coast Guard (USCG) to coordinate and direct federal response under subpart D of the National Contingency Plan (40 CFR part 300).

* * * * *

Person: means an individual, firm, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body, as well as a department, agency, or instrumentality of the executive, legislative or judicial branch of the Federal Government. This definition includes railroads.

Petroleum oil means any oil extracted or derived from geological hydrocarbon deposits, including oils produced by distillation or their refined products.

* * * * *

Response activities means the containment and removal of oil from navigable waters and adjoining shorelines, the temporary storage and disposal of recovered oil, or the taking of other actions as necessary to minimize or mitigate damage to the environment.

Response plan means a basic plan meeting requirements of subpart B or a comprehensive plan meeting requirements of subpart C. For comprehensive plans this definition includes both the railroad's core plan and the response zone appendices for responding, to the maximum extent practicable, to a worst case discharge of oil or the substantial threat of such a discharge.

Response zone means one or more route segments identified by the railroad utilizing the response resources which are available to respond within 12 hours after the discovery of a worst-case discharge or to mitigate the substantial threat of such a discharge for a comprehensive plan meeting requirements of subpart C.

* * * * *

Worst-case discharge means "the largest foreseeable discharge in adverse weather conditions," as defined at 33 U.S.C. 1321(a)(24). The largest foreseeable discharge includes discharges resulting from fire or explosion. The worst-case discharge from a train consist is the greater of: (1) 300,000 gallons of liquid petroleum oil; or (2) 15% of the total lading of liquid petroleum oil transported within the largest train consist reasonably expected to transport liquid petroleum oil in a given response zone.

* * * * *

■ 6. Add a new subpart B heading immediately before § 130.31 to read as follows:

Subpart B—Basic Spill Response Plans

■ 7. In § 130.31:

■ a. Revise the section heading.

■ b. Revise paragraph (a) introductory text and paragraph (b).

The revisions read as follows:

§ 130.31 Basic spill response plans.

(a) No person may transport liquid petroleum oil in a packaging having a capacity of 3,500 gallons or more unless that person has a current basic written plan that:

* * * * *

(b) A person with a comprehensive plan in conformance with the requirements of subpart C of this part 130 is not required to also have a basic spill prevention plan.

■ 7. Revise § 130.33 heading to read as follows:

§ 130.33 Basic response plan implementation.

* * * * *

■ 8. Add subpart C to read as follows:

Subpart C—Comprehensive Oil Spill Response Plans

§ 130.101 Applicability for comprehensive plans.

(a) Any railroad which transports any liquid petroleum or other non-petroleum oil subject to this part in a quantity greater than 42,000 gallons (1,000 barrels) per packaging must have a current comprehensive written plan meeting the requirements of this subpart; or

(b) Any railroad which transports a single train transporting 20 or more loaded tank cars of liquid petroleum oil in a continuous block or a single train carrying 35 or more loaded tank cars of liquid petroleum oil throughout the train consist must have a current comprehensive written plan meeting the requirements of this subpart. Tank cars carrying mixtures or solutions of petroleum oil not meeting the criteria for Class 3 flammable or combustible material in § 173.120 of this chapter, or containing residue, are not required to be included when determining the number of tank cars transporting liquid petroleum oil in paragraph (b) of this section.

(c) The requirements of this subpart do not apply if the oil being transported is otherwise excepted per § 130.2(c).

(d) A railroad required to develop a response plan in accordance with this section may not transport oil (including handling and storage incidental to transport) unless—

(1) The response plan is submitted, reviewed, and approved as required by § 130.111 of this part or in conformance with paragraph (e) of this section; and

(2) The railroad is operating in compliance with the response plan.

(e) A railroad required to develop a response plan in accordance with this section may continue to transport oil without an approval from FRA provided all of the following criteria are met:

(1) The railroad submitted a plan in accordance with the requirements of § 130.111(a);

(2) The submitted plan includes the certification in § 130.106(a)(1);

(3) The railroad is operating in compliance with the submitted plan; and

(4) FRA has not issued a final decision that all or part of the plan does not meet the requirements of this subpart.

§ 130.102 General requirements for comprehensive plans.

(a) Each railroad subject to this subpart must prepare and submit a plan including resources and procedures for responding, to the maximum extent practicable, to a worst-case discharge, and to a substantial threat of such a discharge, of oil. The plan must use the National Incident Management System (NIMS) and Incident Command System (ICS):

(b) Response plan format. Each response plan must be formatted to include:

(1) *Core plan:* The response plan must include a core plan containing an information summary required by § 130.104(a)(1) of this part and information which does not change between different response zones; and

(2) *Response Zone Appendix or Appendices:* For each response zone included in the response plan, the response plan must include a response zone appendix that provides the information summary required by § 130.104(a)(2) of this part and any additional information which differs between response zones. In addition, each response zone appendix must identify all of the following:

(i) A description of the response zone, including county(s) and state(s);

(ii) A list of route sections contained in the response zone, identified by railroad milepost or other identifier;

(iii) Identification of environmentally sensitive or significant areas per route section as determined by § 130.103 of this part; and

(iv) The location where the response organization will deploy, and the location and description of the response equipment required by § 130.106(c)(6) of this part.

(c) Instead of submitting a response plan, a railroad may submit an Annex of an Integrated Contingency Plan (ICP) if the Annex provides equivalent or greater spill protection than a response plan required under this part. Guidance on the ICP is available in the **Federal Register** or electronically from the National Service Center for Environmental Publications (NSCEP) (*https://www.epa.gov/nscep*).

§ 130.103 National contingency plan (NCP) and area contingency plan (ACP) compliance for comprehensive plans.

(a) A railroad must certify in the response plan that it reviewed the NCP (40 CFR part 300) and each applicable ACP and that its response plan is consistent with the NCP and each applicable ACP as follows:

(1) At a minimum, for consistency with the NCP, a comprehensive response plan must:

(i) Demonstrate a railroad's clear understanding of the function of the federal response structure, reflecting the relationship between the response organization's role and the Federal-On-Scene Coordinator's role in pollution response (*e.g.* inclusion of the OSC in a Unified Command, and a statement that the OSC has highest authority on-scene).

(ii) Include procedures to immediately notify the National Response Center; and

(iii) Establish provisions to ensure the protection of safety at the response site.

(2) At a minimum, for consistency with the applicable ACP (or Regional Contingency Plan (RCP) for areas lacking an ACP), the comprehensive response plan must:

(i) Address the removal of a worst-case discharge, and the mitigation or prevention of the substantial threat of a worst-case discharge, of oil;

(ii) Identify environmentally sensitive or significant areas as defined in section 130.5 of this part, along the route, which could be adversely affected by a worst-case discharge and incorporate appropriate deflection and protection response strategies to protect these areas;

(iii) Describe the responsibilities of the persons involved and of Federal, State, and local agencies in removing a discharge and in mitigating or preventing a substantial threat of a discharge; and

(iv) Identify the procedures to obtain any required federal and state authorization for using alternative response strategies such as in-situ burning and/or chemical agents as provided for in the applicable ACP and subpart J of 40 CFR part 300.

(b) Reserved.

§ 130.104 Information summary for comprehensive plans.

(a) Each person preparing a comprehensive response plan is subject to the following content requirements of the plan:

(1) The information summary for the core plan must include all of the following:

(i) The name and mailing address of the railroad;

(ii) A listing and description of each response zone, including county(s) and state(s); and

(iii) The name or title of the qualified individual(s) and alternate(s) for each response zone, with telephone numbers at which they can be contacted on a 24-hour basis.

(2) The information summary for each response zone appendix must include all of the following:

(i) The name and mailing address of the railroad;

(ii) A listing and description of the response zone, including county(s) and state(s);

(iii) The name or title of the qualified individual(s) and alternate(s) for the response zone, with telephone numbers at which they can be contacted on a 24-hour basis;

(iv) The quantity and type of oil carried; and

(v) Determination of the worst-case discharge and supporting calculations.

(b) *Form of information:* The information summary should be listed first before other information in the plan or clearly identified through the use of tabs or other visual aids.

§ 130.105 Notification procedures and contacts for comprehensive plans.

(a) The railroad must develop and implement notification procedures which include all of the following:

(1) Procedures for immediate notification of the qualified individual or alternate;

(2) A checklist of the notifications required under the response plan, listed in the order of priority;

(3) The primary and secondary communication methods by which notifications can be made;

(4) The circumstances and necessary time frames under which the notifications must be made; and

(5) The information to be provided in the initial and each follow-up notification.

(b) The notification procedures must include the names and addresses of the following individuals or organizations, with the ten-digit telephone numbers at which they can be contacted on a 24-hour basis:

(1) The oil spill response organization(s);

(2) Applicable insurance representatives or surveyors for each response zone;

(3) The National Response Center (NRC);

(4) Federal, state, and local agencies which the railroad expects to have pollution control responsibilities or support; and

(5) Personnel or organizations to notify for the activation of equipment

and personnel resources identified in § 130.106.

§ 130.106 Response and mitigation activities for comprehensive plans.

(a) Each railroad must certify that they have identified and ensured by contract or other means the private response resources in each response zone necessary to remove, to the maximum extent practicable, a worst-case discharge. The certification must be signed by the qualified individual or an appropriate corporate officer.

(b) Each railroad must identify and describe in the plan the response resources which are available to arrive onsite within 12 hours after the discovery of a worst-case discharge or the substantial threat of such a discharge. It is assumed that response resources can travel according to a land speed of 35 miles per hour, unless the railroad can demonstrate otherwise.

(c) Each plan must identify all of the following information for response and mitigation activities:

(1) Methods of initial discharge detection;

(2) Responsibilities of and actions to be taken by personnel to initiate and supervise response activities pending the arrival of the qualified individual or other response resources identified in the response plan that are necessary to ensure the protection of safety at the response site and to mitigate or prevent any discharge from the tank cars;

(3) The qualified individual's responsibilities and authority;

(4) Procedures for coordinating the actions of the railroad or qualified individual with the actions of the U.S. EPA or U.S. Coast Guard On-Scene Coordinator responsible for monitoring or directing response and mitigation activities;

(5) The oil spill response organization's responsibilities and authority; and

(6) For each oil spill response organization identified under this section, a listing of:

(i) Equipment, supplies, and personnel available and location thereof, including equipment suitable for adverse weather conditions and the personnel necessary to continue operation of the equipment and staff the oil spill response organization during the response; or

(ii) In lieu of the listing of equipment, supplies, and personnel, a statement that the response organization is an Oil Spill Removal Organization that has been approved by the United States Coast Guard under 33 CFR 154.1035 or 155.1035.

§ 130.107 Training procedures for comprehensive plans.

(a) A railroad must certify in the response plan that it conducted training to ensure that:

(1) All railroad employees subject to the plan know—

(i) Their responsibilities under the comprehensive oil spill response plan; and

(ii) The name of, and procedures for contacting, the qualified individual or alternate on a 24-hour basis;

(2) Reporting personnel also know—

(i) The content of the information summary of the response plan;

(ii) The toll-free telephone number of the National Response Center; and

(iii) The notification process required by § 130.105 of this subpart.

(b) Recurrent training. Employees subject to this section must be trained at least once every five years or, if the plan is revised during the five-year recurrent training cycle, within 90 days of implementation of the revised plan. New employees must be trained within 90 days of employment or change in job function.

(c) *Recordkeeping.* Each railroad must create and retain a record of current training of all railroad personnel engaged in oil spill response, inclusive of the preceding five years, in accordance with this section for as long as that employee is employed and for 90 days thereafter. A railroad must make the employee's record of training available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation. The record must include all of the following:

(1) The employee's name;

(2) The most recent training completion date of the employee's training;

(3) The name and address of the person providing the training; and

(4) Certification statement that the designated employee has been trained, as required by this subpart.

(d) Nothing in this section relieves a person from the responsibility to ensure that all personnel are trained in accordance with other regulations. Response personnel may be subject to the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120, including volunteers or casual laborers employed during a response who are subject to those standards pursuant to 40 CFR part 311. Hazmat employees, as defined in § 171.8, are subject to the training requirements in subpart H of part 172 of this chapter, including safety training.

§ 130.108 Equipment testing and drill procedures for comprehensive plans.

(a) The plan must include a description of the methods used to ensure equipment testing meets the manufacturer's minimum recommendations or equivalent.

(b) A railroad must implement and describe a drill program following the National Preparedness for Response Exercise Program (PREP) guidelines, which can be found using the search function on the USCG's Web page, *http://www.uscg.mil.* These guidelines are also available from the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD 20875 (fax: 301–386–5394, stock number USCG–X0241). A railroad choosing not to follow PREP guidelines must have a drill program that is equivalent to PREP. The plan must include a description of the drill procedures and programs the railroad uses to assess whether its response plan will function as planned, including the types of drills and their frequencies.

(c) *Recordkeeping.* Railroads must keep records showing the exercise dates and times, and the after action reports that accompany the response plan exercises, and provide copies to Department of Transportation representatives upon request.

§ 130.109 Recordkeeping and plan update procedures for comprehensive plans.

(a) *Recordkeeping.* For purposes of this part, copy means a hardcopy or an electronic version. Each railroad must:

(1) Maintain a copy of the complete plan at the railroad's principal place of business;

(2) Provide a copy of the core plan and the appropriate response zone appendix to each qualified individual and alternate; and

(3) Provide a copy of the information summary to each dispatcher in response zones identified in the plan.

(b) Each railroad must include procedures to review the plan after a discharge requiring the activation of the plan in order to evaluate and record the plan's effectiveness.

(c) Each railroad must update its plan to address new or different conditions or information. In addition, each railroad must review its plan in full at least every 5 years from the date of the last approval.

(d) If changes to the plans are made, updated copies of the plan must be provided to every individual referenced under paragraph (a) of this section.

(e) If new or different operating conditions or information would substantially affect the implementation of the response plan, the railroad must immediately modify its plan to address such a change and must submit the change to FRA within 90 days in accordance with § 130.111. Examples of changes in operating conditions or information that would substantially affect a railroad's response plan are:

(1) Establishment of a new railroad route, including an extension of an existing railroad route, construction of a new track, or obtaining trackage rights over a route not covered by the previously approved plan;

(2) The name of the oil spill response organization;

(3) Emergency response procedures;

(4) The qualified individual;

(5) A change in the NCP or an ACP that has significant impact on the equipment appropriate for response activities; or

(6) Any other information relating to circumstances that may affect full implementation of the plan.

(f) If FRA determines that a change to a response plan does not meet the requirements of this part, FRA will notify the operator of any alleged deficiencies, and provide the railroad with an opportunity to respond, including an opportunity for an informal conference, to any proposed plan revisions, as well as an opportunity to correct any deficiencies.

(g) A railroad who disagrees with a determination that proposed revisions to a plan are deficient may petition FRA for reconsideration, within 30 days from the date of receipt of FRA's notice. After considering all relevant material presented in writing or at an informal conference, FRA will notify the railroad of its final decision. The railroad must comply with the final decision within 30 days of issuance unless FRA allows additional time.

§ 130.111 Submission and approval procedures for comprehensive plans.

(a) Each railroad must submit a copy of the response plan required by this part. Copies of the response plan must be submitted to: Associate Administrator for Railroad Safety, Federal Railroad Administrator (FRA), 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Note: Submission of plans contained in an electronic format is preferred.

(b) If FRA determines that a response plan requiring approval does not meet all the requirements of this part, FRA will notify the railroad of any alleged deficiencies and provide the railroad an opportunity to respond, including the opportunity for an informal conference, to any proposed plan revisions, as well as an opportunity to correct any deficiencies.

(c) A railroad who disagrees with the FRA determination that a plan contains alleged deficiencies may petition FRA for reconsideration within 30 days from the date of receipt of FRA's notice. After considering all relevant material presented in writing or at an informal conference, FRA will notify the operator of its final decision. The railroad must comply with the final decision within 30 days of issuance unless FRA allows additional time.

(d) FRA will approve the response plan if FRA determines that the response plan meets all requirements of this part. FRA may consult with the U.S. Environmental Protection Agency (EPA) or the U.S. Coast Guard (USCG) allowing an On-Scene Coordinator (OSC) to identify concerns about the railroad's ability to respond to a worst-case discharge or implement the plan as written. EPA or the USCG would not be responsible for plan approval.

(e) If FRA receives a request from an OSC to review a response plan, FRA may require a railroad to give a copy of the response plan to the OSC. FRA may consider OSC comments on response techniques, protecting fish, wildlife and environmentally sensitive environments, and on consistency with the ACP. FRA remains the approving authority for the response plan.

(f) A railroad may ask for confidential treatment in accordance with the procedures in 49 CFR 209.11.

§ 130.112 Response plan implementation for comprehensive plans.

If, during transportation of oil subject to this part, a discharge of oil occurs—into or on the navigable waters; on the adjoining shorelines to the navigable waters; or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of, the United States—the person transporting the oil must implement the plan required by § 130.101, and in a manner consistent with the National Contingency Plan, 40 CFR part 300, or as otherwise directed by the On-Scene Coordinator.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 9. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 10. In 171.7, redesignate paragraphs (h)(45) through (h)(51) as (h)(46) through (h)(52) and add new paragraph (h)(45) to read as follows:

§ 171.7 Reference material.

* * * * *

(h) * * *

(45) ASTM D7900–13 Standard Test Method for Determination of Light Hydrocarbons in Stabilized Crude Oils by Gas Chromatography, 2013, into § 173.121.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 11. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81 and 1.97.

■ 12. In § 173.121 add paragraph (a)(2)(vi) to read as follows:

§ 173.121 Class 3—Assignment of packing group.

* * * * *

(a) * * *

(2) * * *

(vi) Petroleum products containing known flammable gases—Standard Test Method for Determination of Light Hydrocarbons in Stabilized Crude Oils by Gas Chromatography (ASTM D7900). The initial boiling point is the temperature at which 0.5 weight percent is eluted when determining the boiling range distribution.

* * * * *

PART 174—CARRIAGE BY RAIL

■ 13. The authority citation for part 174 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 33 U.S.C. 1321; 49 CFR 1.81 and 1.97.

■ 14. In § 174.310 add paragraph (a)(6) to read as follows:

§ 174.310 Requirements for the operation of high-hazard flammable trains.

* * * * *

(a) * * *

(6) *Oil Spill Prevention and Response Plans.* The additional requirements for petroleum oil transported by rail in accordance with part 130 of subchapter B.

* * * * *

■ 15. Add section § 174.312 to read as follows:

§ 174.312 HHFT information sharing notification for emergency responders.

(a) Prior to transporting a high-hazard flammable train (HHFT) as defined in § 171.8 of this subchapter, a railroad must provide each State Emergency Response Commission (SERC), Tribal Emergency Response Commission (TERC), or other appropriate state delegated agency for further distribution to appropriate local authorities, upon request, in each state through which it operates a HHFT the information as described in paragraphs (a)(1) and (2) of this section.

(1) At a minimum, the information railroads are required to provide to the relevant state or tribal agencies must include the following:

(i) A reasonable estimate of the number of HHFTs that the railroad expects to operate each week, through each county within the state or through each tribal jurisdiction;

(ii) The routes over which the HHFTs will operate;

(iii) A description of the hazardous material being transported and all applicable emergency response information required by subparts C and G of part 172 of this subchapter;

(iv) A HHFT point of contact: at least one point of contact at the railroad (including name, title, phone number and address) with knowledge of the railroad's transportation of affected trains and responsible for serving as the point of contact for the SERC, TERC, or other state or tribal agency responsible for receiving the information; and

(v) If a route identified in paragraph (a)1)(ii) of this section is additionally subject to the comprehensive spill plan requirements in subpart C of part 130 of this chapter, the information must include a description of the response zones (including counties and states) and the contact information for the qualified individual and alternate, as specified under § 130.104(a);

(2) *Recordkeeping and transmission.* The HHFT notification must be maintained and transmitted in accordance with all of the following requirements:

(i) On a monthly basis, railroads must update the notifications. If there are no changes, the railroad may provide a certification of no change.

(ii) Notifications and updates may be transmitted electronically or by hard copy.

(iii) If the disclosure includes information that railroads believe is security sensitive or proprietary and exempt from public disclosure, the railroads should indicate that in the notification.

(iv) Each point of contact must be clearly identified by name or title and role (*e.g.*, qualified individual, HHFT point of contact) in association with the telephone number. One point of contact may fulfill multiple roles.

(v) Copies of the railroad's notifications made under this section must be made available to the Department of Transportation upon request.

(b) Reserved.

Issued in Washington, DC, on July 13, 2016, under the authority of 49 U.S.C. 5103(b), 33 U.S.C. 1321, and the authority delegated in 49 CFR 1.97.

William Schoonover,

Acting Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–16938 Filed 7–28–16; 8:45 am]

BILLING CODE 4910–60–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Friday,
No. 146 July 29, 2016

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210, 215, 220, et al.

National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

[FNS–2011–0019]

RIN 0584–AE09

National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule and interim final rule.

SUMMARY: This rule adopts as final, with some modifications, the National School Lunch Program and School Breakfast Program regulations set forth in the interim final rule published in the **Federal Register** on June 28, 2013. The requirements addressed in this rule conform to the provisions in the Healthy, Hunger-Free Kids Act of 2010 regarding nutrition standards for all foods sold in schools, other than food sold under the lunch and breakfast programs. Most provisions of this final rule were implemented on July 1, 2014, a full year subsequent to publication of the interim final rule. This was in compliance with section 208 of the Healthy, Hunger-Free Kids Act of 2010, which required that State and local educational agencies have at least one full school year from the date of publication of the interim final rule to implement the competitive food provisions.

Based on comments received on the interim final rule and implementation experience, this final rule makes a few modifications to the nutrition standards for all foods sold in schools implemented on July 1, 2014. In addition, this final rule codifies specific policy guidance issued after publication of the interim rule. Finally, this rule retains the provision related to the standard for total fat as interim and requests further comment on this single standard.

DATES: *Effective date:* This final rule is effective September 27, 2016.

Comment date: Comments on the interim final rule total fat standard must be submitted by September 27, 2016.

Compliance dates: Except as noted in this final rule, compliance with the nutrition standards and other provisions of the interim final rule began on July 1, 2014. The potable water provision was effective on October 1, 2010, and compliance with that provision was required no later than August 27, 2013.

ADDRESSES: To be considered, written comments must be submitted by one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select "Food and Nutrition Service" from the agency drop-down menu, and click "Submit". In the Docket ID column of the search results select "FNS–2011–0019" to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period is available through the site's "User Tips" link.
- *By Mail:* Send comments to Tina Namian, Branch Chief, School Meals Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302. Mailed comments must be postmarked on or before the comment deadline identified in the **DATES** section of this preamble to be assured of consideration.

All submissions received in response to the interim final provision on total fat will be included in the record and will be available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting comments will be subject to public disclosure. FNS also will make the comments publicly available by posting a copy of all comments on *http://regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tina Namian, Branch Chief, School Meals Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Overview

This rule affirms, with some modifications, the interim final rule (IFR) that implemented amendments made by sections 203 and 208 of Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), to the Child Nutrition Act of 1966 (CNA) and the Richard B. Russell National School Lunch Act (NSLA) for schools that participate in the School Breakfast Program (SBP) and the National School Lunch Program (NSLP). The final rule addresses public comments submitted in response to the IFR and makes some adjustments that improve clarity of the provisions set forth in the IFR. In response to comments and implementation experience as shared by operators, the final rule also incorporates and codifies some policy guidance to allow additional foods and combinations to meet the nutrition standards. Specifically, the regulation finalizes the IFR, with the following changes:

Modifies definitions as follows:

- Adds the term "main dish" to the definition of "Entrée" for clarification;
- Adds the term "grain-only" breakfast entrées to the definition of "Entrée" to codify policy guidance issued during implementation; and
- Adds a definition of "Paired exempt foods" to codify policy guidance issued during implementation.

Expands exemptions as follows:

- Adds a specific exemption to the total fat and saturated fat standard for eggs; and
- Modifies the exemption to the General Standards for canned vegetables to exempt low sodium and no-salt added vegetables with no added fat to more closely align with USDA Foods standards and industry production standards.

Retains as interim with a request for comment:

- The nutrient standard for total fat.

Makes a technical change as follows:

- In § 210.11(i) and § 210.11(j), a revision is made to clarify that the calorie and sodium limits apply to all competitive food items available on school campus and not just to those sold a la carte during the meal service.

Impact of the 2015–2020 Dietary Guidelines for Americans

The original development of the standards contained in this regulation was informed by the 2010 Dietary Guidelines for Americans (DGA), which were published in December 2010. Based on a thorough review of the recently published 2015–2020 DGA, USDA has determined that the standards contained in this regulation are also consistent with the new DGA. Key recommendations from the 2010 DGA are maintained in the 2015–2020 DGA, and so continue to be in line with the standards included in this rule. The 2015–2020 DGA contain a specific additional recommendation on limiting *added* sugar. A discussion of this recommendation and its relationship to the standards included in this rule is contained in this preamble in the discussion of the standard for sugar.

II. Background

The NSLP served an average of 30.4 million children per day in Fiscal Year

(FY) 2014. In that same FY, the SBP served an average of 13.6 million children daily.

The NSLA (42 U.S.C. 1751 *et seq.*) and the CNA (42 U.S.C. 1771 *et seq.*) require the Secretary to establish nutrition standards for meals served under the NSLP and SBP, respectively. Prior to the enactment of the HHFKA, section 10 of the CNA limited the Secretary's authority to regulate competitive foods, *i.e.*, foods sold in competition with the school lunch and breakfast programs, to those foods sold in the food service area during meal periods. The Secretary did not have authority to establish regulatory requirements for food sold in other areas of the school campus or at other times in the school day.

The HHFKA, enacted December 13, 2010, directed the Secretary to promulgate regulations to establish science-based nutrition standards for foods sold in schools other than those foods provided under the NSLP and SBP. Section 208 of the HHFKA amended section 10 of the CNA (42 U.S.C. 1779) to require that such nutrition standards apply to all foods sold:

- Outside the school meal programs;
- On the school campus; and
- At any time during the school day.

Section 208 requires that such standards be consistent with the most recent DGA and that the Secretary consider authoritative scientific recommendations for nutrition standards; existing school nutrition standards, including voluntary standards for beverages and snack foods; current State and local standards; the practical application of the nutrition standards; and special exemptions for infrequent school-sponsored fundraisers.

In addition, the amendments made by section 203 of the HHFKA amended section 9(a) of the NSLA (42 U.S.C. 1758(a)) to require that schools participating in the NSLP make potable water available to children at no charge in the place where meals are served during the meal service. This is a nondiscretionary requirement of the HHFKA that became effective October 1, 2010, and was required to be implemented by August 27, 2013.

The Department published a proposed rule in the **Federal Register** on February 8, 2013 (78 FR 9530), titled *National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010.* This rule proposed nutrition standards for foods offered for sale to students outside of the NSLP and SBP, including foods sold à la carte and in school stores and vending machines. The standards were designed to complement recent improvements in school meals, and to help promote diets that contribute to students' long term health and well-being. The proposed rule also would have required schools participating in the NSLP and afterschool snack service under NSLP to make water available to children at no charge during the lunch and afterschool snack service. USDA received a total of 247,871 public comments to the proposed rule during the 60-day comment period from February 8, 2013 through April 9, 2013. This total included several single comment letters with thousands of identical comments. Approximately 245,665 of these were form letters, nearly all of which were related to 104 different mass mail campaigns. The remaining comments—over 2,200—were unique comments rather than form letters. Comments represented a diversity of interests, including advocacy organizations, industry and trade associations, farm and other industry groups, schools, school boards and school nutrition and education associations, State departments of education, consumer groups and others. USDA appreciated the public interest in the proposed rule and carefully considered all comments in drafting the IFR.

As referenced earlier in this preamble, the Department published an IFR in the **Federal Register** on June 28, 2013, (78 FR 39068) titled National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010, and all provisions were required to be implemented on July 1, 2014, a full year subsequent to publication of the IFR standards. This was in compliance with section 208 of the HHFKA requirement that State and local educational agencies have at least one full school year from the date of publication of the IFR to implement the competitive food provisions.

III. General Summary of Comments Received on the Interim Rule

A total of 520 public comments on the IFR were received during the 120-day comment period that ended on October 28, 2013. Fifty-three of these comments were copies of form letters related to nine different mass mail campaigns. The remaining comments included 460 letters with unique content rather than form letters. A total of 386 of these comments were substantive. Comments represented a diversity of interests, including advocacy organizations; health care organizations; industry and trade associations; farm and industry groups; schools, school boards and school nutrition and education associations; State departments of education; consumer groups; and others. A relatively modest number of comments were received on the IFR, many of which reiterated previous comments received during the proposed rule comment period and which had been taken into consideration as the IFR was drafted. This final rule, therefore, incorporates relatively minor modifications to the provisions of the IFR.

In general, there was support for the IFR. Stakeholders were very supportive of the IFR, and some had specific comments and suggestions on several provisions included in the rule. Of the 520 comments, 103 were in full support of the rule. Fifty commenters objected to implementation of this rule, indicating that no standards for competitive food should be implemented in schools. The remaining commenters included suggested revisions to various aspects of the rule and its implementation.

Commenters recommended expanding exemptions to several of the standards for specific food items, such as side items served in the NSLP and the SBP, while others recommended continuing the initial sodium standard for snack foods. Several commenters recommended that the General Standard which allowed foods meeting the 10 percent Daily Value for nutrients of public health concern be made permanent rather than eliminated on July 1, 2016, as was included in the IFR. More detailed discussions of these specific issues are included in this preamble.

Twenty-five comments expressed general support for the IFR, many citing concerns for childhood obesity and stating that competitive food standards will reinforce healthy eating habits in school and outside of school. In addition to their overall support of the rule, an advocacy organization and an individual commenter stated that lower income students may not have the opportunity to experience healthier food items outside of the school. These commenters asserted that this rule will introduce these students to healthier foods and possibly influence home food consumption patterns and protect the nutritional needs of children. One trade association applauded the Department's encouragement of dairy foods consumption throughout the rule and urged that these changes be retained. One individual commenter remarked that the inclusion of recordkeeping and compliance requirements, consideration of special situations, and implementation information makes this rule even more complete.

Although in support of the IFR in general, two commenters asserted that there are other factors that cause obesity in our society besides foods available in schools. For example, these commenters suggested that reducing physical education class in school has led to increased sedentary lifestyles of children. Commenters also noted the importance of supplementing nutrition requirements for foods available in schools with nutrition and health education in schools.

Some of those commenters concerned about the competitive food standards established in the IFR asserted that foods sold in schools are not the cause of childhood obesity and that the rule will result in significant revenue losses for school food service, citing financial strain on schools caused by the recently revised NSLP standards. Most of these comments were opposed to the rule in its entirety and did not comment on specific provisions of the IFR.

The Department acknowledges that there are many factors contributing to childhood obesity and supports the idea that developing a healthy nutrition environment in school plays an important role in combatting childhood obesity, as well. This rule reinforces the development of a healthy school environment. In addition, the Department recognizes that nutrition and health education as well as physical activity are important to the development of a healthy lifestyle and encourages schools to develop local school wellness standards that incorporate these items into the school day.

In addition to public comments submitted during the formal comment period, USDA continued to respond to feedback and questions from program operators and other impacted parties throughout the implementation year in order to provide clarification, develop policy guidance, and inform us as the final rule was being developed.

The description and analysis of comments in this preamble focus on general comment themes, most frequent comments, and those that influenced revisions to this final rule. Provisions not addressed in the preamble to this final rule did not receive significant or substantial public comments and remain unchanged. The reasons supporting the provisions of the proposed and interim regulations were carefully examined in light of the comments received to determine the continued applicability of the justifications. Those reasons, enunciated in the proposed and interim regulations, should be regarded as the basis for this final rule unless otherwise stated, or unless inconsistent with this final rule or this preamble. A thorough understanding of the rationale for various provisions of this final rule may require reference to the preamble of both the proposed rule published on February 8, 2013 (78 FR 9530) and the interim final rule published on June 28, 2013 (78 FR 39068).

To view all public comments on the IFR, go to *www.regulations.gov* and search for public submissions under document number FNS–2011–0019–4716. Once the search results populate, click on the blue text titled, "Open Docket Folder." USDA appreciates the public comments and shared operator experiences as they have been essential in developing a final rule that is expected to improve the quality of all foods sold outside of the NSLP and SBP.

IV. Summary of the Final Rule Competitive Food Standards

The competitive foods and beverages standards included in the June 28, 2013, IFR were implemented on July 1, 2014, and are retained in this final rule with some modifications, as noted in the following chart in bold letters. The modifications or changes made in this final rule are discussed next in the preamble.

SUMMARY OF FINAL RULE COMPETITIVE FOOD STANDARDS

Food/nutrient	Standard	Exemptions to the standard
General Standard for Competitive Food.	To be allowable, a competitive FOOD item must: (1) Meet all of the proposed competitive food nutrient standards; and (2) Be a grain product that contains 50% or more whole grains by weight or have whole grains as the first ingredient; *or* (3) Have as the first ingredient one of the non-grain main food groups: fruits, vegetables, dairy, or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); *or* (4) Be a combination food that contains at least ¼ cup fruit and/or vegetable. (5) If water is the first ingredient, the second ingredient must be one of the above.	• Fresh and frozen fruits and vegetables with no added ingredients except water are exempt from all nutrient standards. • Canned fruits with no added ingredients except water, which are packed in 100% juice, extra light syrup, or light syrup are exempt from all nutrient standards. • Low sodium/No salt added canned vegetables with no added fats are exempt from all nutrient standards.
NSLP/SBP Entrée Items Sold à la Carte.	Any entrée item offered as part of the lunch program or the breakfast program is exempt from all competitive food standards if it is served as a competitive food on the day of service or the day after service in the lunch or breakfast program.	
Grain Items	Acceptable grain items must include 50% or more whole grains by weight, or have whole grains as the first ingredient.	
Total Fats[1]	Acceptable food items must have ≤35% calories from total fat as served.	• Reduced fat cheese (including part-skim mozzarella) is exempt from the total fat standard. • Nuts and seeds and nut/seed butters are exempt from the total fat standard. • Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fats are exempt from the total fat standard. • Seafood with no added fat is exempt from the total fat standard.

Summary of Final Rule Competitive Food Standards—Continued

Food/nutrient	Standard	Exemptions to the standard
		• Whole eggs with no added fat are exempt from the total fat standard. Combination products other than paired exempt foods are not exempt and must meet all the nutrient standards.
Saturated Fats	Acceptable food items must have <10% calories from saturated fat as served.	• Reduced fat cheese (including part-skim mozzarella) is exempt from the saturated fat standard. • Nuts and seeds and nut/seed butters are exempt from the saturated fat standard. • Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fats are exempt from the saturated fat standard. • Whole eggs with no added fat are exempt from the saturated fat standard. Combination products other than paired exempt foods are not exempt and must meet all the nutrient standards.
Trans Fats	Zero grams of trans fat as served (≤0.5 g per portion).	
Sugar	Acceptable food items must have ≤35% of weight from total sugar as served.	• Dried whole fruits or vegetables; dried whole fruit or vegetable pieces; and dehydrated fruits or vegetables with no added nutritive sweeteners are exempt from the sugar standard. • Dried whole fruits, or pieces, with nutritive sweeteners that are required for processing and/or palatability purposes (*i.e.*, cranberries, tart cherries, or blueberries) are exempt from the sugar standard. • Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fats are exempt from the sugar standard.
Sodium	Snack items and side dishes: ≤200 mg sodium per item as served, including any added accompaniments. Entrée items: ≤480 mg sodium per item as served, including any added accompaniments.	
Calories	Snack items and side dishes: ≤200 calories per item as served, including any added accompaniments. Entrée items: ≤350 calories per item as served including any added accompaniments.	
Accompaniments	Use of accompaniments is limited when competitive food is sold to students in school. The accompaniment must be included in the nutrient profile as part of the food item served and meet all proposed standards.	
Caffeine	Elementary and Middle School: foods and beverages must be caffeine-free with the exception of trace amounts of naturally occurring caffeine substances. High School: foods and beverages may contain caffeine.	
Beverages	Elementary School • Plain water or plain carbonated water (no size limit); • Low fat milk, unflavored (≤8 fl oz); • Non-fat milk, flavored or unflavored (≤8 fl oz), including nutritionally equivalent milk alternatives as permitted by the school meal requirements; • 100% fruit/vegetable juice (≤8 fl oz); and. • 100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners (≤8 fl oz). Middle School • Plain water or plain carbonated water (no size limit); • Low-fat milk, unflavored (≤12 fl oz); • Non-fat milk, flavored or unflavored (≤12 fl oz), including nutritionally equivalent milk alternatives as permitted by the school meal requirements; • 100% fruit/vegetable juice (≤12 fl oz); and • 100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners (≤12 fl oz). High School • Plain water or plain carbonated water (no size limit); • Low-fat milk, unflavored (≤12 fl oz);	

SUMMARY OF FINAL RULE COMPETITIVE FOOD STANDARDS—Continued

Food/nutrient	Standard	Exemptions to the standard
	• Non-fat milk, flavored or unflavored (≤12 fl oz), including nutritionally equivalent milk alternatives as permitted by the school meal requirements; • 100% fruit/vegetable juice (≤12 fl oz); • 100% fruit/vegetable juice diluted with water (with or without carbonation), and no added sweeteners (≤12 fl oz); • Other flavored and/or carbonated beverages (≤20 fl oz) that are labeled to contain <5 calories per 8 fl oz, or ≤10 calories per 20 fl oz; and • Other flavored and/or carbonated beverages (≤12 fl oz) that are labeled to contain ≤40 calories per 8 fl oz, or ≤60 calories per 12 fl oz.	
Sugar-free Chewing Gum	Sugar-free chewing gum is exempt from all of the competitive food standards and may be sold to students at the discretion of the local educational agency.	

V. Discussion of Comments and Changes to the Final Rule

Definitions

The amendments made by the HHFKA stipulate that the nutrition standards for competitive food apply to all foods and beverages sold: (a) Outside the school meals programs; (b) on the school campus; and (c) at any time during the school day. The IFR at § 210.11(a) included definitions of *Competitive food, School day,* and *School campus.*

Competitive food means all food and beverages other than meals reimbursed under programs authorized by the NSLA and the CNA available for sale to students on the *School campus* during the *School day.* Fifteen comments were received on this definition. Several commenters, including advocacy organizations and professional associations, generally agreed with the definition for "competitive food." More specifically, these commenters supported that the competitive food standards will apply to all foods and beverages sold across the school campus and throughout the school day (until at least 30 minutes after school ends). An advocacy organization and an individual commenter suggested that FNS substitute the word "served" for the term "available for sale" in the definition of "competitive food" because doing so would send a more consistent message to students and families by assuring that all foods brought into the school were subject to the same standards. The Department wishes to point out that the amendments made by the HHFKA do not provide the Secretary with jurisdiction over foods brought from outside of the school. Therefore, the definition for "competitive food" is unchanged in this rule.

School day means, for the purpose of competitive food standards implementation, the period from the midnight before, to 30 minutes after the end of the official school day. Thirty comments were received on this definition. Nine of those comments mentioned the applicability of the IFR to non-school hours.

Some commenters, including a trade association, a food manufacturer, and a school district, expressed support for the IFR definition for "school day." However, more commenters disagreed with the IFR definition of "school day" primarily requesting that the definition should be expanded to include all times during which students are on campus and engaged in school-sponsored activities or all after-school hours in order to achieve the objective of promoting healthy food choices for children. Some commented that imposing competitive food standards during the school day but eliminating them after school sends a mixed message with regard to the need to eat healthy foods at all times.

In contrast, a trade association and a food manufacturer suggested that USDA should more narrowly define "school day" to exclude foods sold at school programs and activities that occur before the start of the instructional school day to achieve consistency with the treatment of afterschool activities. Other individual commenters suggested that the school day should start at the beginning of school and end at the dismissal bell in order to allow morning and after school sales of noncompliant competitive foods.

The Department wishes to reiterate that section 208 of the HHFKA amended the CNA to require that the competitive food standards apply to foods sold at any time during the school day, which does not include afterschool programs, events and activities. In addition, as a reminder, these standards are minimum standards. If an LEA wishes to expand the application of the standards to afterschool activities, they may do so. The definition of "school day" is, therefore, unchanged in this final rule. In addition, in order to clarify the applicability of the competitive foods nutrition standards, if a school operates a before or after-school program through the Child and Adult Care Food Program or the NSLP, the meal pattern requirements of the appropriate program shall be followed.

Paired Exempt Foods

The competitive food standards provide exemptions for certain foods that are nutrient dense, even if they may not meet all of the specific nutrient requirements. For example, all fresh, frozen and most canned fruits as specified in § 210.11(d)(1) are exempt from all of the nutrient standards because we want to encourage students to consume more of these foods. Similarly, peanut butter and other nut butters are exempt from the total fat and saturated fat standards, since these foods are also nutrient dense and primarily consist of healthier fats.

A combination food is defined as a product that contains two or more foods representing two or more of the food groups: Fruit, vegetable, dairy, protein or grains. When foods are combined, they no longer retain their individual exemptions and must meet the nutrient standards that apply to a single item.

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[1] Please note that the Total Fat nutrient standard is being maintained as an interim final standard. The Department is requesting additional comments on this standard in this rulemaking. Please see further discussion in Part V of this preamble.

However, the regulation did not specifically address the treatment of foods that are exempt from the regulatory requirements when they are simply paired and packaged with other products (without added ingredients) that are also exempt from one or more of the standards. Many of these "paired exemptions" are nutrient dense and contain foods that meet the intent of the competitive foods requirements. In response to concerns raised by operators in the first year of implementation, FNS issued policy guidance clarifying that "paired exempt foods" retain their individually designated exemption for total fat, saturated fat, and/or sugar when packaged together and sold. Paired exempt foods are required to meet the designated calorie and sodium standards specified in paragraphs § 210.11(i) and (j) at all times. Some examples of paired exemptions include:

- *Peanut Butter and celery.* Peanut butter is exempt from the total fat and saturated fat requirements. When it is paired with a vegetable or fruit, such as celery, the paired snack retains the total fat and saturated fat exemptions and may be served as long as the calorie and sodium limits are met.
- *Celery paired with peanut butter and unsweetened raisins.* As noted above, celery and peanut butter both have exemptions. Similarly, dried fruit, such as unsweetened raisins, are exempt from the sugar limit. However, calorie and sodium limits still apply to the snack as a whole.
- *Reduced fat cheese served with apples.* Reduced fat cheese is exempt from the total fat and saturated fat limits. When it is paired with a vegetable or fruit, such as apples, the paired snack is only required to meet the calorie and sodium limits.
- *Peanuts and apples.* Peanuts are exempt from the total fat and saturated fat limits. When peanuts are paired with a vegetable or fruit, such as apples, the paired snack is only required to meet calorie and sodium limits.

Operator implementation using the policy guidance was positive. Therefore, FNS is formalizing this policy clarification through this final rule by adding a definition of *Paired exempt foods* at § 210.11(a)(6).

Definition of Entrée Item

Entrée item was defined in § 210.11(a)(3) as an item that includes only the following three categories of main dish food items:

- A combination food of meat or meat alternate and whole grain rich food;
- A combination food of vegetable or fruit and meat or meat alternate; or
- A meat or meat alternate alone, with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters.

During the course of implementation, some questions were received with regard to packaging and selling two snack items together, such as a cheese stick and a pickle or a whole grain-rich cookie and yogurt, and considering that item to be an entrée in order to sell products with the higher entrée calorie and sodium limits. The proposed rule clearly expressed the Department's intent that an entrée be the main dish in the meal. Therefore, in order to clarify the definition of "Entrée item", the phrase "intended as the main dish" is being added to the regulatory definition.

Some commenters, including trade associations and food manufacturers, urged FNS to expand the definition of entrée to include a grain only, whole-grain rich entrée, on the basis that such foods are commonly served entrée items in the SBP (*e.g.*, pancakes, cereal, or waffles). A trade association and a food manufacturer commented that if a breakfast item does not qualify for the definition of entrée item, it will be restricted to the 200-calorie limit for snack items, which falls well below the minimum calorie requirements for breakfast under the SBP.

An individual commenter recommended creating a separate definition of "breakfast entrée" to allow grain/bread items as an option. A professional association and a food manufacturer requested that typical breakfast foods, such as a bagel and its accompaniments be considered an entrée rather than a snack/side item at breakfast time or at lunch time. However, a State department of education, a community organization, and some individual commenters recommended that FNS not allow a grain-only entrée to qualify as a breakfast entrée item. The community organization argued that these items are of minimal nutritional value and typically involve the addition of high-sugar syrups. The State department of education commented that allowing grain-only entrée items under the competitive food regulations would allow schools to sell SBP entrée items such as muffins, waffles, and pancakes that would not otherwise meet the competitive food standards.

In view of the comments as well as input received on grain-only entrées during implementation of the IFR, the Department published Policy Memorandum SP 35–2014 to clarify that, although grain-only items were not included in the IFR as entrées, an SFA is permitted to determine which item(s) are the entrée items for breakfasts offered as part of the SBP. The policy flexibility was well received and, therefore, this final rule amends the definition of "Entrée item" to include reference to whole grain rich, grain-only breakfast items served in the SBP, making them allowable breakfast entrées subject to the entrée exemptions allowed in the rule on the day of and the day after service in the SBP. Such entrée items also may be served at lunch in the NSLP on the day of or the day after service in the SBP.

In summary, this final rule makes no changes to the IFR definitions of *Competitive food, Combination foods, School day,* and *School campus* at § 210.11(a). This rule adds a definition of *Paired exempt foods* to allow paired exemption items to be sold in schools, and amends the definition of *Entrée item* to include: (1) A specific reference to grain only breakfast entrées served in the SBP, and (2) to incorporate the term "intended as the main dish" into the definition to further clarify the requirements for entrées as well as entrée exemptions.

State and Local Educational Agency Standards

Under § 210.11(b)(1) of the IFR, State and/or LEAs have the discretion to establish more rigorous restrictions on competitive food, as long as they are consistent with the provisions set forth in program regulations.

Thirty-five comments addressed this discretion and numerous commenters expressly supported the provision. Several commenters, including a school professional association, and individual commenters, urged FNS to not allow additional standards for competitive foods beyond the Federal standards because a national standard will allow manufacturers to produce food items at a lower cost. A trade association recognized that the IFR may not be preemptive, but requested that USDA not encourage States to create additional criteria for competitive foods. This commenter expressed concerns that inconsistent State policies for competitive foods will limit reformulation opportunities.

However, 12 advocacy organizations and an individual commenter expressed the need for a national framework for competitive foods and also expressed support for allowing States and localities to implement locally-tailored, standards that are not inconsistent with the Federal requirements. Similarly, some school professional associations and individual commenters supported allowing States the flexibility to create their own restrictions on competitive foods, as needed.

The ability of State agencies and LEAs to establish additional standards that do not conflict with the Federal competitive food requirements is consistent with the intent of section 208 of the HHFKA, and with the operation of the Federal school meal programs in general. That discretion also provides an appropriate level of flexibility to States and LEAs to set or maintain additional requirements that reflect their particular circumstances consistent with the development of their local school wellness policies. Any additional restrictions on competitive food established by school districts must be consistent with both the Federal requirements as well as any State requirements.

This final rule makes no change to the provision allowing States and LEAs to establish additional competitive food standards that are not inconsistent with the Federal requirements. This provision may be found at § 210.11(b)(1).

Suggestions To Prohibit Foods With Artificial Colors, Flavors and/or Preservatives

Four individual commenters expressed concerns about continuing to allow the sale of foods that contain genetically modified organisms (GMO) and foods containing artificial ingredients, colors, and flavors. Just over 30 comments were received on other issues relating to food requirements. These comments included suggestions such as eliminating or putting limitations on high fructose corn syrup, sugar, fiber, and GMO foods. One individual commenter urged that all foods sold in schools should be organic.

The Food and Drug Administration (FDA) makes determinations regarding the safety of particular food additives and USDA defers to FDA on such determinations. As discussed previously, these standards are minimal standards that must be met regarding competitive foods sold in schools. This final rule continues to provide the flexibility to implement additional standards at the State and/or local level.

General Competitive Foods Standards

The rationale for many comments received on the IFR was consistency with the HUSSC and Alliance for a Healthier Generation standards. The Department wishes to point out that while those standards were considered in the development of the proposed rule, both of those standards have conformed to the USDA competitive foods standards subsequent to publication of the IFR.

Combination Foods

The general nutrition standard in the rule at § 210.11(c)(2)(iv) specifies that combination foods must contain ¼ cup of fruit or vegetables. The Department received 45 comments on this provision of the IFR, the majority of which urged us to reduce the fruit or vegetable components to ⅛ cup to be consistent with NSLP/SBP standards, which allow schools to credit ⅛ cup of fruit or vegetable toward the total quantity required for school meals. As indicated in the preamble to the IFR rule, maintaining the higher ¼ cup quantity requirement for fruits/vegetables in combination foods generally supports the availability of more nutritious competitive food products and is consistent with the Institute of Medicine (IOM) recommendations and the DGA. Competitive foods are evaluated on the basis of the qualities of the individual product being sold as opposed to the quantity of the ingredients of the product being credited toward the meal pattern requirement in the NSLP or SBP. Moreover, it is important to note that combination foods with less than ¼ cup of a fruit or vegetable may indeed qualify under the other food requirements specified in the rule, such as the whole grain rich or food group criteria, depending on the composition of the food item. It is only for those foods that qualify solely on the basis of being a competitive food product that contains a fruit or vegetable that this ¼ cup specification is required. This food standard as specified in § 210.11(c)(2)(iv) is, therefore, retained in the final rule.

Whole Grains

One of the general standards for competitive foods included in § 210.11(c)(2)(ii) and (e) requires that grain products be whole-grain rich, meaning that they must contain 50 percent or more whole grains by weight or have whole grains as the first ingredient.

About 60 comments addressed this IFR requirement. Many commenters, including a State department of education, urged USDA to make the competitive food whole grain standard consistent with the NSLP/SBP whole grain standard. Several commenters, including a school professional association and individual commenters, supported the "whole grain rich" requirement. In particular, food manufacturers, trade associations, and a school district emphasized the importance of including the criteria that the whole grains per serving should be greater than or equal to 8 grams in the whole grain-rich identifying criteria. Three individual commenters generally opposed the whole grain-rich requirement.

As indicated in the preamble to the proposed rule, this standard is consistent with the DGA recommendations, the whole grain-rich requirements for school meals and the prior HUSSC whole grain-rich requirement (HUSSC has subsequently updated the standards to conform to these competitive food standards). The Department wishes to point out that the whole grain criteria for competitive foods is used as a criterion for determining the allowability of an individual item to be sold as a competitive food, while school meals' whole grain-rich criteria determine the crediting of the menu items toward the grain component of the meal. Allowing the additional measures for grain suggested by some commenters such as ≥8 grams of whole grain would not ensure that grain products in competitive food contain at least 50 percent whole grains and would require additional information from the manufacturer. Therefore, the whole grain-rich standard established in the interim final rule is affirmed in this final rule.

The food industry has made a significant effort to reformulate products to meet this standard and to reinforce the importance of whole grains to the general public as well. These efforts have resulted in the availability of numerous whole grain-rich products in the general public marketplace as well as in the foods available for service and purchase in schools. Maintaining this standard ensures that students have the flexibility to make choices among the numerous whole grain-rich products that are now available to them in school.

Since this competitive food standard is consistent with the DGA recommendations, the whole grain-rich requirements for school meals, and HUSSC standards, this final rule affirms the requirement as established by interim final rule.

DGA Nutrients of Public Health Concern

In recognition of the marketplace and implementation limitations, but also mindful of important national nutrition goals, the IFR implemented a phased-in approach to identifying allowable competitive foods under the general standard. For the initial implementation period in School Year 2014–15 through June 30, 2016 (School Year 2015–16), the general food standard included a criterion that if a competitive food met none of the other General Standards, that food may be considered allowable if it contained 10 percent of the Daily Value of a nutrient of public health concern (*i.e.*, calcium, potassium, vitamin D, or dietary fiber). Effective July 1, 2016, this criterion was removed as a general criterion.

Eight commenters, including some food manufacturers, opposed the phase out of this criterion as a General Standard for allowable foods. However, information available to the Department indicates that industry has made major strides over the past three years and many manufacturers have come into compliance with the competitive food standards by reformulating their products in recognition of the fact that the 10-percent DV General Standard would become obsolete as of July 1, 2016. Prior to July 1, 2016, fewer than 21 products that depended solely on the 10-percent DV General Standard appeared on the Alliance for a Healthier Generation (AHG) Food Navigator as Smart Snacks compliant foods. There are currently about 2,500 Smart Snacks compliant products listed in the AHG product database. This means that items that had qualified based solely upon the 10-percent DV General Standard represented less than 1 percent (0.84 percent) of the products that had been captured in the Alliance Navigator.

Therefore, this final rule makes no changes to the General Standards for competitive foods established by the IFR and the 10-percent DV standard has expired as scheduled. Eliminating the 10-percent DV criterion more closely aligns the competitive food standards with the DGA, as required by the HHFKA.

Elimination of this standard aligns the competitive foods rule with the DGA which states that "nutrients should come primarily from foods" as well as the IOM recommendations which indicate that this approach "reinforces the importance of improving the overall quality of food intake rather than nutrient-specific strategies such as fortification and supplementation."

Specific Nutrient Standards § 210.11(d)–(k)

In addition to the General Standards, the rule includes nutrient standards for specific nutrients contained in allowable foods. These include standards for total fat, saturated fat, trans fat, total sugars, calories and sodium. These standards apply to competitive foods as packaged or served to ensure that the competitive food standards apply to the item sold to the student.

Twenty commenters expressed general support for the IFR nutrient standards for competitive foods without discussing a specific element of the nutrient standards. Several advocacy organizations and professional associations agreed with requiring that all foods sold in schools meet the nutrient standards and with limiting calories, fats, sugars, and sodium in snack foods and beverages. A health care association expressed support for the nutrition standards adopted in the IFR suggesting that any changes made should strengthen the standards and not weaken them. Another health care association expressed the belief that the established limits will inherently preclude the sale of candy and other confections and products with added sugars that promote tooth decay. An individual commented that the nutrient standards will eliminate many seemingly healthy foods that are surprisingly laden with sugar, calories, fat, or salt. A trade association supported the use of a nutrition criteria-based system for competitive food standards, as opposed to a structure that allows and disallows specific foods, because manufacturers will have the opportunity to reformulate and innovate to meet the rule's provisions.

Seven commenters expressed general opposition to the IFR nutrient standards for competitive foods without discussing a specific element of the nutrient standards. A few individual commenters expressed concerns that the IFR nutrient standards will encourage chemically processed low-fat foods and sugar substitutes at the expense of whole foods and natural sugars. A food manufacturer urged USDA to simplify the criteria for competitive foods by using only the calorie limit and eliminating the total fat, saturated fat, and sugar limits, arguing that the combined calorie limit and food group standards would be less burdensome to implement and would inherently limit fats and sugars.

The overwhelming majority of comments received on the proposed rule supported the nutrient standards and those standards were incorporated into the IFR with some minor changes. The IFR comments received on this issue were minimal and primarily supported the established standards. Therefore, this rule finalizes the nutrient standards as included in the IFR with the addition of several modifications being made to items exempt from those nutrient standards as discussed below.

Fruits and Vegetables

Generally consistent with both the IOM and the DGA, the IFR included an exemption to the nutrient standards for fresh, frozen and canned fruits and vegetables with no added ingredients except water or, in the case of fruit, packed in 100 percent fruit juice, extra light syrup or light syrup; and for canned vegetables that contain a small amount of sugar for processing purposes in order to maintain the quality and structure of the vegetable.

Ten comments expressed support for the IFR exemption from the nutrient standards for fresh, frozen, or canned fruits and vegetables. In particular, a school professional association and some individual commenters agreed with the decision to include "light syrup" in the exemption. A food manufacturer supported the inclusion of all forms of fruit, and products made with fruit, without added nutritive sweeteners, as competitive foods.

Three commenters recommended that the exemption for fruits and vegetables be more stringent. These commenters suggested that any added syrup contributes added unneeded sugars. Two trade associations supported the IFR provision that fruit packed in light syrup is exempt from the nutrition standards.

However, a few comments were received addressing the exemption parameters for canned vegetables—allowing an exemption only for those canned vegetables containing water and a small amount of sugar for processing. A trade association and a food manufacturer stated that they were not aware of any canned vegetables that contain only water and sugar for processing purposes. They indicated that sodium, citric acid, and other ingredients are commonly used in the processing of canned vegetables. They also pointed out that those processing aids are allowed to be used in the low sodium vegetables packed for the USDA Foods Program.

The Department wishes to point out that, although some sodium is used in processing canned vegetables, most canned vegetables would still meet the nutrient standards for sodium without being given a specific exemption. However, in light of the important nutrients provided by vegetables, for ease of operator implementation and in recognition of common processing procedures, the Department agrees that low sodium/no salt added canned vegetables should also benefit from the fruit and vegetable exemption. This final rule, therefore, revises the canned vegetable exemption to allow low sodium/no salt added canned vegetables with no added fat to be exempt from each of the competitive food nutrient standards.

Total Fat, Saturated Fat and Trans Fat

To qualify as an allowable competitive food, the IFR at § 210.11(f) requires that no more than 35 percent of the total calories per item as packaged or served be derived from total fat and requires that the saturated fat content of a competitive food be less than 10 percent of total calories per item as packaged or served. In addition, as specified in § 210.11(g), a competitive food must contain zero grams of trans fat per portion as packaged or served (not more than 0.5 grams per portion).

While there are no exemptions from the trans fat standard, there are a number of exemptions from the total fat and the saturated fat standards. Seafood with no added fat is exempt from the total fat standard but is still subject to the saturated fat, trans fat, sugar, calorie and sodium standards. Exemptions included in the IFR to both the total fat and saturated fat standards include reduced fat cheese and part skim mozzarella cheese not included in a combination food item, nuts and seeds and nut/seed butters not included in a combination food item and products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat. Such exempt products are still subject to other competitive food nutrient standards such as the trans fat, sugar, calorie and sodium standards.

Total Fat

Fifteen commenters, including a school professional association and several individuals, expressed support for the IFR competitive food restriction on total fat. No comments were received to make this standard more stringent. However, about 30 comments opposed the IFR restriction on total fat, arguing in favor of either making the restriction less stringent or eliminating the standard entirely. Two trade associations asserted that the total fat limit is inconsistent with the NSLP/SBP standards, which limit saturated fat and trans fat but not total fat. These commenters suggested that limitations on calories, saturated fat, and trans fat in competitive food standards will ensure that the foods are low in total fat. Similarly, a school district also recommended removing the total fat limit, asserting that such a limit is inconsistent with the NSLP/SBP requirements and will place an undue burden on menu planners.

Fifty-five comments addressed the IFR exemptions from the total fat limit. Three trade associations and a food manufacturer expressed support for the exemption for part-skim mozzarella. Two individual commenters, however, opposed the exemption for reduced-fat cheese and part-skim mozzarella, asserting that whole foods may be healthier than low-fat alternatives. Three trade associations and a school district favored extending the exemption for reduced-fat cheese to all cheese that meets the calorie limits.

Some commenters suggested various other modifications to the standards for individual foods, such as eggs, yogurt, and full fat cheese. A couple of comments dealt with various combinations of food items that are effectively dealt with in this final rule with the addition of a definition of *Paired exempt foods* discussed previously in this preamble.

One commenter mistakenly noted that alternative milk products allowed in the reimbursable meals programs may not meet these requirements. We wish to clarify that total fat, saturated fat and trans fat standards do not apply to beverages.

The Department recognizes that there may be foods that are commonly enjoyed by students and are generally healthy, but do not currently meet the competitive food standards due to the total fat content. Specifically, we are aware that some legume-based spreads/dips may offer significant nutritional benefits, but may not be able to meet total fat standards due to the inherent fat content of key ingredients in traditional legume based spreads or dips, such as hummus. Another common and generally healthy snack food is guacamole. Although avocado is currently exempt from the total fat standard because it is a fruit, when other non-fruit or vegetable ingredients are added to make a dip, the exemption is lost and the total fat standard is exceeded. Other common and generally healthy foods that may benefit from removal of the total fat standard include snack bars and salads with dressing.

Because the DGAs are based on the latest scientific research and do not have a key recommendation for total fat and to address commenter requests for consistency between standards for competitive foods sold in schools and the NSLP/SBP, the Department has determined that further comment should be accepted on the total fat standard. In particular, comments are requested on whether the standard for total fat should be eliminated given that there will continue to be standards in place for calories, sodium, saturated fat, and trans fats which will limit unhealthy fats. Comments are also sought on whether the total fat standard should be maintained but should exempt certain food items. While the total fat standard as currently implemented will continue to be in place, this single, individual standard remains an interim final standard. The Department, as previously noted, will accept public comments on this standard only. The Department is interested in comments related to the impact revising or eliminating the total fat standard may have. This could include allowing more items to be sold that are lower in unhealthy, saturated fats but that might be higher in healthy, unsaturated fats and simplifying implementation for local operators. Commenters also should consider whether there could be unintended consequences to revising or eliminating the total fat standard. As noted above, commenters should keep in mind that the standards for calories, sodium, saturated fat, and trans fat remain in place and will continue to limit the types of foods that may be sold in schools.

Saturated Fat (<10% of Calories)

Twenty comments expressed support for the IFR competitive food restriction on saturated fat. A school district recommended consistency with NSLP/SBP by only calculating saturated fat and total calories.

Twenty-five commenters were opposed to the IFR restriction on saturated fat, arguing in favor of either making the restriction less stringent or eliminating the standard entirely. A school professional association and individual commenters argued that the standard is too restrictive and will exclude grilled cheese, chicken tenders, hot dogs, pizza, and healthy option entrées.

Forty-five comments addressed the IFR exemptions from the saturated fat limit. Most of the comments requested saturated fat exemptions for the same products for which they requested total fat exemptions discussed above. Three trade associations and a school district favored extending the saturated fat exemption to all cheese that meets the calorie limits.

Additional comments specifically addressed exemptions from the saturated fat limit. A professional association and several individual commenters suggested that the saturated fat standard should exclude eggs or cheese packaged for individual sale and for non-fried vegetables and legumes.

Seven comment letters included other comments relating to the IFR saturated fat limit. Two trade associations and a food manufacturer requested that FNS clarify a conflict in the IFR. These commenters stated that the "Summary of Major Provisions" in the preamble states that competitive foods must contain "no more than 10 percent" of total calories from saturated fat, but § 210.11(f)(1)(ii) states that the saturated fat content of a competitive food must be "less than 10 percent" of total calories. The Department wishes to clarify that the requirement as included in the regulatory provision at § 210.11(f)(1)(ii) that the saturated fat content of a competitive food must be *less than 10 percent* of total calories is correct.

The Department does not agree that all cheese should be exempt from the total fat and saturated fat standards because the total fat standard included in the IFR is identical to the recommended IOM standard for total fat, and the saturated fat standard is consistent with the DGA recommendations.

Trans Fat (0g as Stated on the Label)

Twenty comments addressed the IFR trans fat restriction. Several commenters, including a school professional association and some individual commenters who supported the total fat and saturated fat limits, also expressed support for the IFR trans fat limit. A school district also expressed support for the IFR limitation of zero grams of trans fat in competitive foods. To reduce confusion among school food service workers and State auditors, a trade association and a food manufacturer recommended that the phrasing of the trans-fat provision for competitive foods should be consistent with the provision in the NSLP/SBP requirements, which does not apply to naturally occurring trans fats present in meat and dairy products. While trans fat content is normally indicated on the label, the Department will provide additional guidance as necessary on this issue through technical assistance resources.

Exemption for Eggs With No Added Fat

The competitive food standards in the IFR provided that, in order to qualify as an allowable competitive food, no more than 35 percent of calories may be contributed by total fat, and less than 10 percent of a food's calories may come from saturated fat. Eggs do exceed these fat standards. However, similar to nut butters, reduced-fat cheese, and seafood, eggs exceed the competitive foods fat standards and are nutrient dense. Eggs are high in protein and contain essential nutrients including, B vitamins, Vitamin E, Vitamin D, iron, zinc, and magnesium. While eggs are high in fat, the DGA recommends increased consumption of nutrient dense foods and includes eggs in a healthy eating pattern. Evidence suggests that one egg a day does not increase a person's risk for high cholesterol or cardiovascular diseases. In addition, some previous State agency standards as well as the previous standards implemented by the Alliance for a Healthier Generation did allow eggs for the reasons cited above.

Therefore, in response to comments, the nutrient profile of eggs mentioned above and operator requests to allow this nutrient dense and low cost option, this final rule is amended to add an exemption from the total fat and saturated fat standards for whole eggs with no added fat. This exemption appears in § 210.11(f)(iv).

Calorie and Sodium Standards for Competitive Foods

Calories

Some commenters supported the IFR competitive food calorie limits. In particular, a health care association urged USDA not to grant requests to increase the IFR calorie limits because doing so would increase the likelihood that students would choose and consume more than the recommended number of calories, which this commenter asserted would undermine USDA's efforts to address the childhood obesity epidemic. A food manufacturer urged replacing the sugar and fats nutrition standards with only the calorie limit.

Many commenters expressed opposition to the calorie limits for competitive foods. Commenters said the proposed limits were too stringent and would limit student access to many food products, particularly a la carte foods sold during the meal service. Some commenters provided specific suggestions for alternative calorie limits for snacks, ranging from 240 to 300 calories, and for entrées, ranging from 400 to 500 calories.

Fifteen commenters addressed age and grade groupings, several suggesting separate calorie limits by grade, similar to the structure of the school meal patterns, reasoning that children have different calorie needs as they grow.

This final rule retains the calorie limits for snacks/side dishes (200 calories per item as packaged or served), and entrée items (350 calories per item as packaged or served), which are consistent with IOM recommendations and some voluntary standards. The Department does not agree that higher limits are appropriate, as suggested by some commenters, particularly since it is not possible to limit the number of competitive food items that may be purchased. We appreciate that separate calorie limits by grade levels for snacks would align with existing voluntary standards that many schools have adopted, and would be more tailored to the nutritional needs of children of different ages. However, separate calorie limits for different grade levels would also add complexity for local program operators with schools of varying grade levels. State agencies or school districts could choose to implement varying calorie limits based on grades, provided the maximum level does not exceed the limit in this final rule. Please note that the calorie limit for entrée items would apply to all entrées that do not meet the exemption for NSLP/SBP entrée items.

The Department wishes to point out that great strides have been made in the availability of competitive foods that meet the standards. Numerous products have been reformulated and/or repackaged to ensure that the products meet the competitive foods standards and those products have been made available to schools for sale to students. In addition, many changes have been made to the a la carte offerings available in the cafeteria and these changes are contributing greatly to the overall healthy environment that is so important in our schools.

Sodium

Under the IFR at § 210.11(i), snack items and side dishes sold à la carte could contain no more than 200 calories and 230 mg of sodium per portion as served, including the calories and sodium in any accompaniments, and must meet all other nutrient standards for non-entrée items. The IFR stipulated that as of July 1, 2016, snack items and side dishes must have not more than 200 calories and 200 mg of sodium per item as packaged or served. Under the IFR at § 210.11(j), entrée items sold à la carte could contain no more than 350 calories and 480 mg sodium per portion as served, including any accompaniments, and meet all other nutrient standards.

Several comments, including one from a health care association and two from individuals, agreed with the IFR sodium provisions. The health care association argued that although some commenters urge USDA to create "consistent" sodium standards for the NSLP/SBP and competitive foods standards, the sodium limits for the school meals program apply to an entire meal, while the sodium limits for competitive foods only apply to one component of a meal—a single entrée, side dish, or snack. Therefore, this commenter reasoned that the sodium limits for competitive food items should be lower than those for a reimbursable meal. An individual commenter acknowledged that sodium limits will alter the tastes of many foods, but suggested that there are many other spices, herbs, and other ways to enhance the flavors of foods without increasing the risk of hypertension.

Several commenters recommended that the sodium reductions should continue to be phased in gradually to allow taste preferences and manufacturers additional time to adjust. Some commenters provided suggestions for higher sodium limits, ranging from 230 mg to 360 mg for snacks and 550 mg to 650 mg for entrées. One commenter, a manufacturer, wanted USDA to add an exemption to the sodium limit for natural reduced fat cheese and reduced fat, reduced sodium pasteurized processed cheese.

The Department's standards for sodium were based on the IOM recommendations. The proposed "per portion as served" standards for competitive food were considered in the context of the DGAs and of the overall sodium limits for school meals, the first of which took effect in School Year 2014–15, the same school year these competitive food standards were implemented. USDA acknowledges that sodium reduction is an issue that impacts the broader marketplace, not just schools, and understands that sodium reduction is a process that will take time.

In recognition of the fact that there were existing voluntary standards for competitive food that had the higher sodium limit of 230 mg for snacks/side dishes, which meant there were existing products that had been formulated to meet the higher standard available to schools, the IFR set the initial limit for sodium for snacks and side dishes at 230 mg per item as packaged or served, for the first two years of implementation of these standards. The IFR provided that, as of July 1, 2016, the sodium limit for snacks and side dishes shall be reduced to 200 mg per item as packaged or served.

It is evident that many manufacturers have developed new products or reformulated existing products to meet the July 1, 2016, 200 mg standard. The Department believes that the phased in approach taken in the IFR did work to ensure product availability for schools for initial implementation and provided ample time for manufacturers to adjust to meet the lower limit. Therefore, this final rule does not change the sodium requirement for snacks and side dishes. The sodium standard of 230 mg for snacks and side dishes expired as scheduled and the 200 mg standard is implemented as of July 1, 2016. In addition, the entrée limit of 480 mg per item as packaged and served will remain in place. The Department wishes to point out that any entrées served in school meals will be covered under the NSLP/SBP entrée item exemption in § 210.11(c)(3)(i).

Total Sugars in Competitive Foods

The IFR at § 210.11(h)(1) provided that not more than 35 percent of the *weight* per item as packaged and served could be derived from total sugars. In addition, § 210.11(h)(2) provided the following exemptions to the total sugar standard:

- Dried whole fruits or vegetables; dried whole fruit or vegetable pieces; and dehydrated fruits or vegetables with no added nutritive sweeteners;
- Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat; and
- Dried fruit with nutritive sweeteners required for processing and/or palatability purposes. (At this time, this applies to dried cranberries, tart cherries and dried blueberries only.)

Most commenters generally supported the application of the total sugars by weight standard. Many commenters stated that this standard provides flexibility and would allow the sale of more products that are favorites among students.

A trade association expressed the opinion that a restriction on sugar is not a necessary component of the competitive food standards because calorie limits will prevent excess sugar consumption. A State department of education and an individual suggested expressing the sugar limit in grams rather than percentages. Several commenters indicated that sugar limits would force manufacturers to produce foods which are actually less healthy in order to meet that standard. Another food manufacturer expressed support for a sugar restriction based on percent calories by weight, although stating that it did not believe a total sugar limit is warranted. A trade association and a food manufacturer asserted that the sugar criterion of 35 percent by weight is in line with the Alliance for a Healthier Generation guidelines, which was the basis of many products specially formulated for schools. The trade association added that for foods that naturally contain fat and sugar, such as dairy products, making lower fat versions of these products reduces the percentage of calories from fat, which increases the percentage of calories from sugar, so a sugar limit based on weight is preferable.

Two comments, one received from an advocacy organization and another from an individual commenter, favored a sugar limit as a percent of calories arguing that such an alternative would be more protective. The individual asserted that there are many foods that would be disallowed were the standard 35 percent sugar by calories, but will be allowed because the sugar limit is a percentage of calories by weight.

The Department acknowledges that this standard allows more products to qualify to be sold as a competitive food in schools but wishes to point out that the portion sizes of these and all foods would be limited by the calorie and fat standards. State agencies and school districts could choose to implement a sugar standard based on calories, provided that it is at least as restrictive as the regulatory standard (*i.e.,* no allowable product under the calorie measure could exceed 35 percent sugar by weight).

Most commenters supported the exemptions to the total sugar requirement as well as the provision allowing an exemption for dried fruit with nutritive sweeteners required for processing and/or palatability purposes. (At this time, this applies to dried cranberries, tart cherries and blueberries only.) A school district requested guidance listing specific dried fruits that require nutritive sweeteners and urged that this list be maintained as guidance rather than as part of the rule so that USDA has flexibility to modify the list as warranted without requiring rulemaking. A trade association commended USDA for agreeing to issue future guidance on determining which dried fruits with added nutritive sweeteners qualify for the exemption. The portion sizes of these dried fruits would be limited by the calorie standards.

A few commenters requested that processed fruit and vegetable snacks (*e.g.,* fruit strips, fruit leathers or fruit drops) be included under the exemption for dried fruit, as many are processed with concentrated fruit puree. The Department, however, does not agree that processed fruit and vegetable snacks should be included under either dried fruit/vegetable exemption. These snack type products are not whole dried fruit pieces and the concentrated fruit puree or juice concentrate used to make these products is often the primary ingredient. These products could still qualify without the exemption as a competitive food if they meet all of the standards, including having a fruit or vegetable as the first ingredient.

The 2015–2020 DGA contain specific recommendations on limiting *added* sugar. This recommendation specifies that no more than 10 percent of calories should come from added sugars. The competitive food standards address sugar content in the context of the percentage of sugar by weight of the product sold. The standards do not include a focus on added sugars, or added sugars representing a particular percentage value compared to calories. The rationale for limiting sugar by weight in the IFR was that a sugar by weight standard was included in a number of voluntary standards reviewed during the development of the proposed rule, and, generally, this standard was supported by commenters as providing the most flexibility for program operators. The Department acknowledged in both the proposed rule and IFR that a sugar standard based on added sugars is preferable but that such a standard would be very difficult for local program operators to implement and for State agencies to monitor, because the current Nutrition Facts label does not differentiate between naturally occurring and added sugars. The Department has consistently indicated that the sugar standard included in this rule will be reconsidered if the Nutrition Label is updated to reflect added sugars. On May 27, 2016, the FDA published a final regulation which included a requirement that added sugars in foods be included on the Nutrition Facts Label (81 FR 34000).The new labeling requirements will be fully implemented by summer 2019. Because of the implementation period of the labeling rule, FNS is maintaining in this final rule the sugar standard that was put forth in the interim final rule. The Department will monitor implementation of the new labeling requirements and, in the future, anticipates updates to program regulations and guidance regarding the sugar standard, particularly considering how to set standards for added sugars in competitive foods sold to students on the school campus during the school day.

Therefore, this final rule continues to require in § 210.11(h)(1), that the total sugar content of a competitive food must be not more than 35 percent of *weight* per item as packaged or served and retains the exemption included in § 210.11(h)(2) to the total sugar content standards for dried fruit with added nutritive sweeteners that are required for processing and/or palatability purposes (currently dried cranberries, tart cherries and blueberries). USDA will issue any necessary future guidance when a determination is made to include any additional dried fruits with added nutritive sweeteners for processing and/or palatability to qualify for this exemption.

Exemptions for Some or All of the Nutrition Standards for Menu Items Provided as Part of the NSLP/SBP

The IFR exempts NSLP/SBP entrée items from the competitive food standards when served as a competitive food on the day of service or the day after service in the reimbursable lunch or breakfast program. Six commenters expressed support for this approach regarding NSLP/SBP menu items sold as competitive foods. Most of these commenters, including advocacy organizations and a health care association, urged USDA not to grant requests to expand the exemption for NSLP/SBP items sold a la carte to, for example, include side dishes. Some of these commenters stated that expanding the exemption would undermine or weaken the competitive food standards. One advocacy organization expressed support that the IFR will require NSLP/SBP side dishes sold a la carte to meet the competitive food standards. Another advocacy organization stated that the approach taken in the IFR will allow for reasonable flexibility for the school food service while also addressing concerns regarding the frequency with which particular food items are available.

Fifteen comments recommended that NSLP/SBP entrées should not receive an exemption from the competitive food standards at any time. Some commenters argued that reimbursable meals are designed to provide a variety of foods and beverages that, over the course of a week, create a balance of all nutrients, while limiting calories, fats and sodium, and this balance can be disrupted when individual foods may be chosen at the expense of the whole meal. Specifically, a health care association commented that because schools are allowed to balance the nutrition components of reimbursable meals over a week, foods that may exceed the limits for fat, sodium, and calories can be included in a reimbursable meal when balanced over the week with healthier sides. For this reason, an advocacy organization stated that the exemption for a la carte NSLP/SBP entrées from the competitive food standards will allow children to continue to purchase less healthy entrée items a la carte instead of nutritious snack foods or more balanced reimbursable meals.

Several advocacy organizations and a professional association argued that allowing the sale of any foods that are inconsistent with the competitive food standards will undermine the IFR and efforts of parents to provide healthy food options to children. This commenter asserted that although the exemption for a la carte NLSP/SBP entrée items only exists on the day and day after it is served as part of a reimbursable meal, many schools—particularly high schools that offer multiple meals each day—may offer popular items like pizza, breaded chicken nuggets, and burgers every day or nearly every day.

One advocacy organization recognized the importance of consistency between foods served in meals and a la carte and argued that there can be consistency without exempting a significant number of a la carte items from competitive food standards. This commenter stated that if individual items meet the competitive food standards, they should have no problem fitting into healthful NSLP/SBP menus, which would allow for consistency and flexibility, while also safeguarding children's health.

One hundred commenters suggested that the competitive food standards should exempt NSLP/SBP entrée items sold a la carte regardless of the day on which they are served as part of the reimbursable meal. Many of those commenters argued that once an item is served that meets reimbursable meal pattern guidelines, it should be allowed to be sold as a competitive food without frequency restrictions. Some stated that such an exemption would ease menu planning and operational issues as well as reduce confusion. These comments were primarily made by trade associations and food industry commenters as well as some school food service organizations.

Closely associated with the issue of exempting NSLP and SBP entrées on the day served and the day after served in the reimbursable meal is the lack of an exemption for side dishes served in the reimbursable meals. Commenters were also split on whether or not such food items should enjoy an exemption from the competitive food standards. Eighty commenters urged that NSLP/SBP side items sold a la carte should be exempt from competitive food standards. Many of the arguments made to support this view were the same as those discussed above related to the suggestion that all NSLP/SBP entrée items should be exempt from all competitive food standards regardless of day served. Other commenters indicated that side items should not be exempt from the competitive food standards.

USDA understands the concerns of commenters on both sides of this issue.

Given the circumstances surrounding NSLP and SBP meal planning as well as the increase in healthful entrées being served, it is important to maintain some flexibility when it comes to NSLP and SBP entrées. However, there is a distinction to be made between the meal patterns for reimbursable meals and the competitive food standards. The NSLP and SBP offer meals over the course of the school week and less nutritious selections may be balanced out with healthier items over the course of the week. Competitive food standards are based on the nutrients that are provided by individual food items that are sold to students on the school campus during the school day. In addition, it is important to note that it appears that many schools have successfully adapted to this requirement, some by expanding the number of entrées available to students on a daily basis and others by incorporating side items that meet the competitive foods requirements into their reimbursable meal menus.

Therefore, the exemption for NSLP/SBP entrée items only is retained. Side dishes sold à la carte would be required to meet all applicable competitive food standards. The exemption for the entrée items is available on the day the entrée item is served in NSLP/SBP, and the following school day. Entrée items are provided an exemption, but side dishes are not, in an attempt to balance commenter opposition to any exemptions for NSLP/SBP menu items and needed menu planning flexibilities. The approach adopted in this rule supports the concept of school meals as being healthful, and provides flexibility to program operators in planning à la carte sales and handling leftovers. We anticipate that this approach, along with the recent changes to school meal standards will continue to result in healthier menu items in meals than in the past, including entrées. Exempt entrées that are sold as competitive food must be offered in the same or smaller portion sizes as the NSLP and SBP.

Guidance on Competitive Foods

Several commenters requested information on a variety of other issues specific to individual foods. Many of these questions have been clarified in the extensive guidance issued by the Department in policy memoranda and other materials that are available on our Web site at *http://www.fns.usda.gov/healthierschoolday/tools-schools-focusing-smart-snacks.* We encourage interested parties to review these materials since they are updated frequently. In addition, the Alliance for a Healthier Generation, in partnership with FNS, has developed extensive resources including guidance materials and the Competitive Foods Calculator and Navigator, which provide a way to evaluate individual foods and beverages as well as a listing of Smart Snacks allowable foods and beverages, respectively. These items are available at *www.healthiergeneration.org.*

Accompaniments

The IFR at § 210.11(n) limited the use of accompaniments to competitive food, such as cream cheese, jelly, butter, salad dressing, etc., by requiring that all accompaniments be included in the nutrient profile as part of the food item served. Two commenters supported requiring accompaniments to be included in the nutrient profile as part of the food item served. A State department of education commented that the requirement to include the nutrient content of accompaniments in the nutrient profile of the product is appropriate and reasonable because condiments can contribute significant calories, sugar, fat and/or sodium. A school district expressed support for the IFR requirements relating to accompaniments not requiring pre-portioning, but requiring that they be included in the nutrient profile of competitive foods. Forty-five commenters opposed the requirement by suggesting that a weekly calorie range should be applied or that there should be no consideration of accompaniments.

The Department maintains that it is important to account for the dietary contribution of accompaniments in determining whether a food item may be served as a competitive food. Accompaniments can provide substantial sodium, sugar and/or calories to food items sold. Therefore, the requirement that accompaniments be included in the nutrient profile of foods is retained. As provided in the IFR, schools may determine the average serving size of the accompaniments at the site of service (*e.g.*, school district). This is similar to the approach schools have used in conducting nutrient analysis of school meals in the past. Schools have successfully implemented this requirement and have not had difficulty in determining the average serving size of accompaniments that are used in schools, but the Department will provide further guidance if necessary.

Nutrition Standards for Beverages

The IFR at § 210.11(m) established standards for allowable beverage types for elementary, middle and high school students. At all grade levels, water, low fat and nonfat milk, and 100 percent juice and 100 percent juice diluted with water with no added sweeteners are allowed in specified maximum container sizes, which varied by grade level. The rule also allows additional beverages for high school students in recognition of the wide range of beverages available to high school students in the broader marketplace and the increased independence such students have, relative to younger students, in making consumer choices.

General Comments on Beverage Requirements

Ten commenters expressed general support for the beverage standards included in the IFR. Sixty-five commenters generally opposed the ICR beverage standards and cited a variety of reasons, from wanting to allow all grade levels to have no-calorie/low calorie beverages to opposing allowing high school students to have no-calorie/low calorie beverages available to them in school. A few commenters asserted that milk is produced in 8 ounce and 16 ounce containers and that requiring a limit of 12 ounce size milk for middle school and high school students may be problematic. While some commenters recommended larger portion sizes for all beverages, others recommended smaller portion sizes, particularly related to juice products. Still other commenters wished to restrict food colorings and other ingredients in 100 percent juice. Several commenters indicated that no-calorie/low calorie beverages should not be allowed in high school due to the inclusion of non-nutritive sweeteners in such beverages. While about 40 commenters supported the removal of the time and place restriction on the sale of other beverages in high school lunchrooms during the meal service, several commenters objected to the elimination of the restriction and a few indicated that such beverages should not be sold in any location at any time in high schools.

A few commenters suggested that USDA use only two grade groups for the beverage standards—elementary and secondary—to ease implementation. Some commenters stated that it would be difficult and/or costly to administer the beverage requirements in combined grade campuses, such as 7–12 or K–12. In response, USDA appreciates that implementation could be more difficult in schools with overlapping grade groups, but considers it important to maintain in the final rule the three grade groupings included in the IFR. These groupings reflect the IOM recommendations and appropriately provide additional choices to high school students, based on their increased level of independence. USDA has provided guidance on this issue and will continue to provide technical assistance and facilitate the sharing of best practices as appropriate.

Other Beverages for High School

Most of the comments received on the IFR beverage requirements dealt with the standards for other beverages allowed in high school. A number of commenters wanted no-calorie and low-calorie beverages to be available in elementary and middle schools as well as high schools, while others opposed these beverages at any grade level. Several commenters stated that although schools may impose more stringent standards, schools may choose to sell diet beverages because the sale of such drinks are profit making. Other commenters indicated that if schools are not allowed to sell no-calorie/low calorie beverages in high school students will purchase them elsewhere and bring them to school.

USDA appreciates the input provided by commenters. The Department maintains that, given the beverages available in the broader marketplace and the independence that high school students enjoy, low calorie/no-calorie beverages may be sold in high schools. However, we do not agree that such beverages should be available to elementary and middle school students in school. No changes are made to this standard.

Caffeine

The IFR at § 210.11(l) required that foods and beverages available in elementary and middle schools to be caffeine free, with the exception of trace amounts of naturally occurring caffeine substances. This is consistent with IOM recommendations. The IFR did, however, permit caffeine for high school students.

Four commenters agreed with the IFR caffeine provisions. A food industry commenter expressed support for limited beverage choices for young children but allowing a broader range of products, including those containing typical amounts of caffeine, in high schools, given the increased independence of high school students. A trade association agreed that high school students should have access to beverages that contain caffeine and asserted that in 1987 FDA found no evidence to show that the use of caffeine in carbonated beverages would render such beverages injurious to health. This commenter asserted that its members provide a wide array of low- and no-calorie beverages to high schools, some of which contain modest amounts of caffeine, but member companies have voluntarily instituted policies against the sale of caffeinated beverages marketed as energy drinks to schools. Two school districts supported caffeinated beverages for high school students.

Forty-five commenters opposed the IFR caffeine provisions, generally because it will allow foods and beverages in high school to contain caffeine. Those commenters were primarily concerned about the use of caffeinated low-calorie energy drinks that contain unregulated amounts of caffeine and other additives.

An advocacy organization cited warnings from the American Academy of Pediatrics and added that aggressive marketing of caffeinated products is designed to appeal to youth and there is a lack of information on caffeine content on food labels. Several commenters opposed allowing the sale of caffeinated drinks in high schools, particularly drinks with high levels of caffeine and no nutritive value.

USDA is concerned, as are some commenters, that some foods and beverages with very high levels of caffeine may not be appropriate to be sold in schools, even at the high school level. The FDA has not set a daily caffeine limit for children, but the American Academy of Pediatrics discourages the consumption of caffeine and other stimulants by children and adolescents. However, the health effects of caffeine are currently being considered by the FDA and the IOM. FDA did announce that it will investigate the safety of caffeine in food products, particularly its effects on children and adolescents. The FDA announcement cited a proliferation of products with caffeine that are being aggressively marketed to children, including "energy drinks." FDA, working with the IOM, convened a public workshop on August 5–6, 2013, to review existing science on safe levels of caffeine consumption and the potential consequences to children of caffeinated products in the food supply. The workshop did not result in any recommendations but a report was produced and may be found at *http://iom.nationalacademies.org/Reports/2014/Caffeine-in-Food-and-Dietary-Supplements-Examining-Safety.aspx*). USDA will continue to monitor efforts by FDA to identify standards regarding the consumption of caffeine by high school aged children.

Therefore, given the lack of authoritative recommendations at this time, this rule will not prohibit caffeine for high school students. However, USDA acknowledges commenters' concerns and encourages schools to be mindful of the level of caffeine in food and beverages when selecting products for sale in schools, especially when considering the sale of high caffeine products such as energy drinks. It is also important to note that local jurisdictions have the discretion to further restrict the availability of caffeinated beverages should they wish to do so.

The caffeine provisions as included in the IFR at § 210.11(k) are not changed.

Non-Nutritive Sweeteners

The IFR did not explicitly address the issue of non-nutritive sweeteners; however, the rule allowed calorie-free and low-calorie beverages in high schools, which would implicitly allow beverages including non-nutritive sweeteners.

Ten commenters addressed the use of non-nutritive sweeteners in food products. Some commenters opposed allowing artificially sweetened beverages. For example, some commenters opposed the sale of diet sodas, whereas others stated that there is little evidence regarding the advisability of intake of sugar-sweetened beverages versus intake of non-nutritive sweeteners in beverages. In contrast, some commenters supported the use of non-nutritive sweeteners. USDA appreciates commenter input but is not explicitly addressing the use of non-nutritive sweeteners in the regulatory text of this final rule. Local program operators can decide whether to offer food and/or beverage items for sale that include non-nutritive sweeteners.

Other Requirements

Fundraisers

The IFR at § 210.11(b)(4) requires that food and beverage items sold during the school day meet the nutrition standards for competitive food but allows for special exemptions for the purpose of conducting infrequent school-sponsored fundraisers, as specified in the HHFKA. The provision included in the IFR was that exempt fundraiser frequency would be determined by the State agency during such periods that schools are in session. The IFR also required that no specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service.

Ten commenters indicated that USDA should establish the number and type of fundraisers that are exempt from the competitive food standards to ensure consistency among States. Other commenters recommended that the Department set parameters for the minimum and maximum numbers of exempt fundraisers based on the size of schools. Thirty comments suggested that all food fundraisers taking place in schools be required to adhere to the competitive food standards at all times. Some commenters indicated that allowing exempt fundraisers will create confusion among parents, students and staff. A number of commenters noted that the approval of exempt fundraisers should be governed by the school wellness policies. Thirty commenters indicated that time and place restrictions on exempt fundraisers should apply not only to the food service area during the meal service but to all locations in the school during the meal service and some suggested placing timeframes on when such fundraisers may be held (for example: one hour after the school lunch service is completed).

The final rule retains the requirements regarding the responsibility of the State agency to determine the frequency of exempt fundraisers in schools. In addition, the rule continues to stipulate that there are no limits on the sale of food items that meet the competitive food requirements (as well as the sale of non-food items) at school fundraisers. In addition, the Department wishes to remind the public that the fundraiser standards do not apply to food sold during non-school hours, weekends and off-campus fundraising events such as concessions during after-school sporting events.

USDA is confident that State agencies possess the necessary knowledge, understanding and resources to make decisions about what an appropriate number of exempt fundraisers in schools should be and that the most appropriate approach to specifying the standards for exempt fundraisers is to allow State agencies to set the allowed frequency of such fundraisers. If a State agency does not specify the exemption frequency, no fundraiser exemptions may be granted. It is not USDA's intent that the competitive food standards apply to fundraisers in which the food sold is clearly not for consumption on the school campus during the school day. It is also important to note that LEAs may implement more restrictive competitive food standards, including those related to the frequency with which exempt fundraisers may be held in their schools, and may impose further restrictions on the areas of the schools and the times during which exempt fundraisers may occur in the schools during the school day.

In addition, USDA has provided guidance on fundraisers in response to a variety of specific questions received during implementation and this guidance may be found in Policy Memo SP 23–2014(V.3) available on our Web site at *http://www.fns.usda.gov/nslp/policy.*

In summary, the exempt fundraiser provisions contained in § 210.11(b)(4) of the IFR are unchanged and the final rule continues to specify that competitive food and beverage items sold during the school day must meet the nutrition standards for competitive food, and that a special exemption is allowed for the sale of food and/or beverages that do not meet the competitive food standards for the purpose of conducting an infrequent school-sponsored fundraiser. Such specially exempted fundraisers must not take place more than the frequency specified by the State agency during such periods that schools are in session. Finally, no specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service.

Availability of Water During the Meal Service

The IFR codified a provision of the HHFKA that requires schools participating in the NSLP to make free, potable water available to children in the place lunches are served during the meal service. Just over 40 comments addressed the part of the IFR that requires schools participating in the NSLP to make free, potable water available to children in the place lunches are served during the meal service and in the cafeteria during breakfast meal service.

Many of these commenters, including advocacy organizations, professional associations and individual commenters, expressed support for the potable water requirement. Two advocacy organizations commented that water has zero calories and is a healthy alternative to sugary drinks. These commenters stated that making the water free and easily accessible may help combat obesity and promote good health. Similarly, one individual commenter stated that the free, potable water requirement will help reduce the purchase of other drinks that are high in added sugars. A few individual commenters remarked that low-income students do not have the luxury of bringing or buying water bottles or even have access to clean running water outside of school, and free potable water is imperative to these students. Two individual commenters recommended that free potable water be available during breakfast, lunch, and all break and recess times regardless of where food is being served.

Section 210.10(a)(1) of the final rule continues to require that schools make potable water available and accessible without restriction to children at no charge in the place where lunches are served during the meal service. In addition, § 220.8(a)(1) requires that when breakfast is served in the cafeteria, schools must make potable water available and accessible without restriction to children at no charge. The Department continues to encourage schools to make potable water available without restriction at all meal and snack services when possible.

Recordkeeping

The IFR at § 210.11(b)(2), outlined the recordkeeping requirements associated with competitive foods. Local educational agencies and school food authorities would be required to maintain records documenting compliance with the requirements. Local educational agencies would be responsible for maintaining records documenting compliance with the competitive food nutrition standards for food sold in areas that are outside of the control of the school food service operation. Local educational agencies also would be responsible for ensuring any organization designated as responsible for food service at the various venues in the school (other than the school food service) maintains records documenting compliance with the competitive food nutrition standards. The school food authority would be responsible for maintaining records documenting compliance with the competitive food nutrition standards for foods sold in meal service areas during meal service periods. Required records would include, at a minimum, receipts, nutrition labels and/or product specifications for the items available for sale.

About 120 commenters expressed concerns about recordkeeping, monitoring and compliance. Twenty commenters specifically addressed recordkeeping. Some of those commenters suggested that recordkeeping is costly, unrealistic and/or not necessary. Yet others recommended minimizing the recordkeeping on non-school groups. A number of commenters representing school food service were concerned that the local educational agency would require school food service to be responsible for recordkeeping on behalf of school food service as well as other entities/organizations within the local educational agency. Additionally, they were concerned that school food service could not affect the requirements throughout the local educational agency since they have no authority over other school organizations.

The Department appreciates that this regulation may have created some new challenges initially, as schools implemented the IFR and took steps to improve the school nutrition environment. Such challenges may be ongoing for some schools. However, maintaining a record that substantiates that the food items available for sale in the schools meet the standards is essential to the integrity of the competitive food standards. To determine whether a food item is an allowable competitive food, the local educational agency designee(s) must assess the nutritional profile of the food item. This may be accomplished by evaluating the product Nutrition Facts Label and/or using the Alliance for a Healthier Generation Calculator to do so and retaining a copy of that evaluation in the files, retaining receipts for the food items ordered or purchased for secondary sale at the various venues at the schools, etc. Absent an evaluation of the nutritional profile of the competitive foods available for sale at the schools, the local educational agency has no way of knowing whether a food item meets the nutrition standards set forth in this rule. The recordkeeping requirement simply requires the local educational agency to retain the reviewed documentation (*e.g.*, the nutrition labels, receipts, and/or product specifications) in their files.

Commenters also expressed concern about the designation of responsibility for this activity. As stated in the IFR, the Department does not expect the responsibility to rest solely with the nonprofit school food service. School food service personnel are expected to have a clear understanding of the nutrition profile of foods purchased using nonprofit school food service funds for reimbursable meals, a la carte offerings, etc. Their authority and responsibilities are typically limited to the nonprofit school food service. Local educational agencies are responsible for ensuring that all entities involved in food sales within a school understand that the local educational agency as a whole must comply with these requirements.

As stated in the IFR, the Department continues to recommend that cooperative duties associated with the sale of competitive foods be coordinated and facilitated by the local school wellness policy designee(s). Section 204 of the HHFKA amended the NSLA by adding section 9A (42 U.S.C. 1758b) which requires each local educational agency to: (a) Establish a local school wellness policy which includes nutrition standards for all foods available on each school campus, and (b) designate one or more local educational agency officials or school officials, to ensure that each school complies with the local school wellness policy. State agencies were advised of the section 204 requirements in FNS Memorandum, *Child Nutrition Reauthorization 2010: Local School Wellness Policies,* issued July 8, 2011 (SP 42–2011). In addition, the Department published a proposed rule titled *Local School Wellness Policy Implementation Under the Healthy, Hunger Free Kids Act of 2010* on February 26, 2014 at 79 FR 10693. Comments were submitted by the public and those comments are being analyzed for the development of an upcoming final rule.

The Department believes, and the experience of many operators confirms, that if the LEA local school wellness designee(s), school food service, and other entities and groups involved with the sale of food on the school campus during the school day work together to share information on allowable foods and coordinate recordkeeping responsibilities, the result is the successful implementation and maintenance of a healthy school environment. As always, State agencies and the Department will provide technical assistance to facilitate ongoing implementation of the competitive food nutrition standards.

Therefore, there are no changes to the recordkeeping requirements and § 210.11(b)(2) of the IFR is affirmed.

Compliance and Monitoring

Section 210.18(h)(6) requires State agencies to ensure that local educational agencies comply with the nutrition standards for competitive food and retain documentation demonstrating compliance with the competitive food service and standards.

As indicated above, about 120 commenters submitted comments related to recordkeeping, monitoring and compliance. A number of commenters, largely school food service personnel, expressed concerns about how monitoring would occur for foods sold by groups outside of the school food service. Some commenters believed technical assistance would be insufficient and raised questions about means to effect compliance. Other commenters expressed concerns about the need to train and educate non-school food service personnel as to how to comply with the regulations. Several State agencies, school districts and individuals requested that the SFA not be held accountable for compliance issues outside of the control of the SFA.

The Department agrees that training will be needed to ensure compliance with the nutrition standards. As mentioned under the discussion of *Recordkeeping* above, the Department envisions local educational agency designees, potentially the local school wellness coordinator(s), taking the lead in developing performance or compliance standards and training for all local educational personnel tasked with selling competitive food on the school campus during the school day. The Department and State agencies will also offer training to ensure local educational agencies are able to comply in the most efficient manner possible.

The Department published a proposed rule titled *Administrative Reviews in the School Nutrition Programs* on May 11, 2015 (80 FR 26846) addressing an updated administrative review process that includes these new monitoring responsibilities. This rule, together with administrative review guidance, provides information regarding the proposed conduct and scope of reviews, and the monitoring and records review that will be conducted with regard to competitive foods. Currently, USDA is reviewing the comments received from the public on the proposed rule in preparation for the development of an implementing rule.

The Department would like to assure commenters that we see technical assistance and training as the first approach to non-compliance; however, we recognize that egregious, repeated cases of non-compliance may require a more aggressive approach. In this regard, section 303 of the HHFKA amended section 22 of the NSLA (42 U.S.C. 1769c) to provide the Department with the authority to impose fines against any school or school food authority repeatedly failing to comply with program regulations. This authority will be addressed in a proposed rule dealing with a number of integrity issues related to local educational agencies administering the Child Nutrition Programs which is currently under development. Interested parties will have an opportunity to comment on the proposed integrity rule.

Special Situations/Applicability

This rule continues to require that all local educational agencies and schools participating in the NSLP and SBP meet the nutrition standards for competitive foods sold to students on the school campus during the school day. Several questions have been received regarding the applicability of these standards to after school programs operated in schools that participate in NSLP/Child and Adult Care Food Program (CACFP). The Department wishes to clarify that such programs are required to comply with their specified meal patterns. Only if food is *sold* to their program participants outside of their meal pattern would the competitive foods standards be applicable for 30 minutes after the end of the official school day, consistent with the definition of *School day* specified in § 210.11(a)(5).

Forty comments addressed impacts of the IFR on culinary training programs. These commenters urged for complete exemption from the competitive food standards for foods prepared and sold as part of culinary education programs. In contrast, a school district, school food service staff, and other individual commenters urged USDA to apply the competitive food standards to foods sold to students during the school day by culinary arts programs.

The Department addressed the applicability of the competitive foods regulation on culinary arts programs in Policy Memo SP 40–2014, published on April 22, 2014. That memo recognized that culinary education programs providing students with technical career training operate in some schools nationwide. Some of those culinary education programs operate food service outlets that sell foods to students, faculty, or others in the community, with a minority of programs doing so during the school day. The memo also clarified that the competitive foods nutrition standards have no impact on the culinary education programs' curriculum in schools, nor do they have any impact on foods sold to adults at any time or to students outside of the school day. However, to the extent that such programs are selling food to students on campus during the school day, the statutory applicability of the Smart Snacks nutrition standards to all foods sold outside of the School meals programs is clear. Section 12(l)(4)(J) of the NSLA (42 U.S.C. 1760(l)(4)(J), prohibits the Secretary from granting a waiver that relates to the requirements of the NSLA, the CNA, or any regulation issued under either statute with regard to the sale of foods sold outside of the school meal programs. The nutrition standards included in the final rule continue to apply to all foods sold to students on the school campus during the school day, including food prepared and/or sold by culinary education programs.

Related Information

Implementation

The competitive food provisions contained in the IFR were implemented by State agencies and local educational agencies on July 1, 2014. Changes made in this final rule may be implemented as specified in the **DATES** section of this preamble. While the total fat standard remains in place, additional comments on the interim final total fat standard are being accepted and must be received as specified in the **DATES** section of this preamble. The saturated fat and trans fat standards are finalized in this rule. This final rule removes § 210.11a and its corresponding Appendix B, which references the sale of foods of minimal nutritional value, since those standards were eliminated as of July 1, 2014, the date that competitive food standards were implemented in their place. Similar changes are made to the breakfast program regulations at 7 CFR part 220.

Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This Final rule has been designated an "economically significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Analysis

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C.601–612). The rule directly regulates the 54 State education agencies and 3 State Departments of Agriculture that operate the NSLP pursuant to agreements with USDA's Food and Nutrition Service. While State agencies are not considered small entities as State populations exceed the 50,000 threshold for a small government jurisdiction, many of the service-providing institutions that work with them to implement the program do meet definitions of small entities.

The requirements established by this final rule will apply to school districts, which meet the definitions of "small governmental jurisdiction" and other establishments that meet the definition of "small entity" in the Regulatory Flexibility Act. The Regulatory Flexibility Act analysis is published as part of the docket (FNS–2011–0019) on *www.regulations.gov.*

Regulatory Impact Analysis Summary

As required for all rules that have been designated as significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this final rule A summary is presented below. The full RIA is published as part of the docket (FNS–2011–0019) on *www.regulations.gov.*

Need for Action

The final rule responds to two provisions of the Healthy, Hunger-Free Kids Act of 2010. Section 208 of HHFKA amended Section 10 of the Child Nutrition Act of 1966 to require the Secretary to establish science-based nutrition standards for all foods sold in schools during the school day. In addition, the amendments made by section 203 of the HHFKA amended section 9(a) of the NSLA (42 U.S.C. 1758(a)) to require that schools participating in the NSLP make potable water available to children at no charge in the place where meals are served during the meal service. This is a nondiscretionary requirement of the HHFKA that became effective October 1, 2010, and was required to be implemented by August 27, 2013.

Response to Comments

The full Regulatory Impact Analysis includes a brief discussion of comments submitted by school officials, public health organizations, industry representatives, parents, students, and other interested parties on the costs and benefits of the final rule submitted. The analysis also contains a discussion of how USDA modified the final rule in response, and the effect of those modifications on the costs and benefits of the rule.

Benefits

The primary purpose of the rule is to ensure that nutrition standards for competitive foods are consistent with those used for the NSLP and SBP, holding competitive foods to standards similar to the rest of foods available to students during the school day. These standards, combined with recent improvements in school meals, will help promote diets that contribute to students' long-term health and well-being. In addition, these standards continue to support a healthy school environment and the efforts of parents to promote healthy choices for children at home and at school.

Obesity has become a major public health concern in the U.S., with one-third of U.S. children and adolescents now considered overweight or obese (Beydoun and Wang 2011[2]), with current childhood obesity rates four times higher in children ages six to 11 than they were in the early 1960s (19 vs. 4 percent), and three times higher (17 vs. 5 percent) for adolescents ages 12 to 19.[3] Research focused specifically on the effects of obesity in children indicates that obese children feel they are less capable, both socially and athletically, less attractive, and less worthwhile than their non-obese counterparts.[4] Further, there are direct economic costs due to childhood obesity: $237.6 million (in 2005 dollars) in inpatient costs[5] and annual prescription drug, emergency room, and outpatient costs of $14.1 billion.[6]

Because the factors that contribute both to overall food consumption and to obesity are so complex, it is not possible to define a level of disease or cost reduction expected to result from implementation of the rule. There is some evidence, however, that competitive food standards can improve children's dietary quality.

- Taber, Chriqui, and Chaloupka (2012[7]) concluded that California high school students consumed fewer calories, less fat, and less sugar at school than students in other States. Their analysis "suggested that California students did not compensate for consuming less within school by consuming more elsewhere" (p. 455).
- In an assessment of the reach and effectiveness of childhood obesity strategies, Gortmaker et al.[8] project that implementing nutrition standards for all foods and beverages sold in schools outside of reimbursable school meals will prevent an estimated 345,000 cases of childhood obesity in 2025 (p. 1937).
- Schwartz, Novak, and Fiore, (2009[9]) determined that healthier competitive food standards decreased student consumption of low nutrition items with no compensating increase at home.
- Researchers at Healthy Eating Research and Bridging the Gap found that "[t]he best evidence available indicates that policies on snack foods and beverages sold in school impact children's diets and their risk for obesity. Strong policies that prohibit or restrict the sale of unhealthy competitive foods and drinks in schools are associated with lower proportions of overweight or obese students, or lower rates of increase in student BMI" (Healthy Eating Research and Bridging the Gap, 2012, p. 3[10]).

A comprehensive assessment of the evidence on the importance of competitive food standards conducted by the Pew Health Group concluded that a national competitive foods policy would increase student exposure to healthier foods, decrease exposure to less healthy foods, and would also likely improve the mix of foods that students purchase and consume at school. Researchers concluded that these kinds of changes in food exposure and consumption at school are important influences on the overall quality of children's diets.

Although nutrition standards for foods sold at school alone may not be a determining factor in children's overall diets, they are critical to providing children with healthy food options throughout the entire school day. Thus, these standards will help to ensure that the school nutrition environment does all that it can to promote healthy choices, and help to prevent diet-related health problems. Ancillary benefits could derive from the fact that improving the nutritional value of competitive foods may reinforce school-based nutrition education and promotion efforts and contribute significantly to the overall effectiveness of the school nutrition environment in promoting healthful food and physical activity choices.[11]

Costs

While there have been numerous success stories, best practices, and innovative practices, it is too early to definitively ascertain the overall impact to school revenue. The changes and technical clarifications in the final rule do not change the methodology of the cost benefit analysis from the methodology used in the interim final regulatory impact analysis, however the estimates are updated using the most recent data available to assess the impacts to revenue and to account for the potential variation in implementation and sustainability experiences across SFAs and schools.

The limited information available indicates that many schools have successfully introduced competitive food reforms with little or no loss of revenue and in a few cases, revenues from competitive foods increased after introducing healthier foods. In some of the schools that showed declines in competitive food revenues, losses from reduced sales were fully offset by increases in reimbursable meal revenue. In other schools, students responded favorably to the healthier options and competitive food revenue declined little or not at all.

But not all schools that adopted or piloted competitive food standards fared as well. Some of the same studies and reports that highlight school success stories note that other schools sustained some loss after implementing similar standards. While in some cases these were short-term losses, even in the long-term the competitive food revenue lost by those schools was not offset (at least not fully) by revenue gains from the reimbursable meal programs.

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[2] Beydoun, M.A. and Y. Wang. 2011. Socio-demographic disparities in distribution shifts over time in various adiposity measures among American children and adolescents: What changes in prevalence rates could not reveal. *International Journal of Pediatric Obesity,* 6:21–35. As cited in Food Labeling: Calorie Labeling of Articles of Food in Vending Machines NPRM. 2011. Preliminary Regulatory Impact Analysis, Docket No. FDA–2011–F–0171.

[3] Ogden et al. *Prevalence of Obesity Among Children and Adolescents: United States, Trends 1963–1965 Through 2007–2008.* CDC–NHCS, NCHS Health E-Stat, June 2010. On the web at *http://www.cdc.gov/nchs/data/hestat/obesity_child_07_08/obesity_child_07_08.htm.*

[4] Riazi, A., S. Shakoor, I. Dundas, C. Eiser, and S.A. McKenzie. 2010. Health-related quality of life in a clinical sample of obese children and adolescents. Health and Quality of Life Outcomes, 8:134–139.Samuels & Associates. 2006. Competitive Foods. Policy Brief prepared by Samuels & Associates for The California Endowment and Robert Wood Johnson Foundation. Available at: *http://www.healthyeatingactivecommunities.org/downloads/*

[5] Trasande, L., Y. Liu, G. Fryer, and M. Weitzman. 2009. Trends: Effects of Childhood Obesity on Hospital Care and Costs, 1999–2005. *Health Affairs,* 28:w751-w760.

[6] Cawley, J. 2010. The Economics of Childhood Obesity. *Health Affairs,* 29:364–371. As cited in Food Labeling: Calorie Labeling of Articles of Food in Vending Machines NPRM. 2011. Preliminary Regulatory Impact Analysis, Docket No. FDA–2011–F–0171.

[7] Taber, D.R., J.F. Chriqui, and F. J. Chaloupka. 2012. Differences in Nutrient Intake Associated With State Laws Regarding Fat, Sugar, and Caloric Content of Competitive Foods. *Archives of Pediatric & Adolescent Medicine,* 166:452–458.

[8] Gortmaker SL, Claire Wang Y, Long MW, Giles CM, Ward ZJ, Barrett JL, Kenney EL, Sonneville KR, Afzal AS, Resch SC, Cradock AL., *Health Affairs,* 34, no. 11 (2015).

[9] Schwartz, M.B., S.A. Novak, and S.S. Fiore. 2009. The Impact of Removing Snacks of Low Nutritional Value from Middle Schools. *Health Education & Behavior,* 36:999–1011.

[10] Healthy Eating Research and Bridging the Gap. 2012. Influence of Competitive Food and Beverage Policies on Children's Diets and Childhood Obesity. Available at *http://www.healthyeatingresearch.org/images/stories/her_research_briefs/Competitive_Foods_Issue_Brief_HER_BTG_7–2012.pdf*

[11] Pew Health Group and Robert Wood Johnson Foundation. 2012. Heath Impact Assessment: National Nutrition Standards for Snack and a la Carte Foods and Beverages Sold in Schools. Available online: *http://www.pewhealth.org/uploadedFiles/PHG/Content_Level_Pages/Reports/KS%20HIA_FULL%20Report%20062212_WEB%20FINAL-v2.pdf.*

Our analysis examines the possible effects of the rule on school revenues from competitive foods and the administrative costs of complying with the rule's competitive foods provisions. The analysis uses available data to construct model-based scenarios that different schools may experience in implementing the rule. While these vary in their impact on overall school food revenue, each scenario's estimated impact is relatively small (+0.5 percent to − 1.3 percent). That said, the data behind the scenarios are insufficient to assess the frequency or probability of schools experiencing the impacts shown in each.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. Because data is not available to meaningfully estimate the quantitative impacts of this rule on school food authority revenues, we are not certain that this rule is subject to the requirements of sections 202 and 205 of the UMRA. That said, it is possible that the rule's requirements could impose costs on State, local, or Tribal governments or to the private sector of $100 million or more in any one year. FNS therefore conducted a regulatory impact analysis that includes a cost/benefit analysis substantially meeting the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP is listed in the Catalog of Federal Domestic Assistance under No. 10.555. The SBP is listed in the Catalog of Federal Domestic Assistance under No. 10.553. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related notice (48 FR 29115, June 24, 1983), these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. USDA has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300–4, "Civil Rights Impact Analysis," and 1512–1, "Regulatory Decision Making Requirements." After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability nor is it intended to have a differential impact on minority owned or operated business establishments and woman-owned or operated business establishments that participate in the Child Nutrition Programs.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this final rule does not contain substantive changes to information collection requirements that require additional approval by OMB. The paperwork requirements for this final rule were previously approved by the Office of Management and Budget (OMB) for the interim final rule under OMB control #0584–0576 and merged into #0584–0006.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes. In the spring of 2011, FNS offered opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy, Hunger-Free Kids Act of 2010 on tribes or Indian Tribal governments. The consultation sessions were coordinated by FNS and held on the following dates and locations:

1. HHFKA Webinar & Conference Call—April 12, 2011
2. Mountain Plains—HHFKA Consultation, Rapid City, SD—March 23, 2011
3. HHFKA Webinar & Conference Call—June, 22, 2011
4. Tribal Self-Governance Annual Conference in Palm Springs, CA—May 2, 2011
5. National Congress of American Indians Mid-Year Conference, Milwaukee, WI—June 14, 2011

The five consultation sessions in total provided the opportunity to address Tribal concerns related to school meals. There were no comments about this regulation during any of the aforementioned Tribal consultation sessions.

Currently, FNS provides regularly scheduled quarterly consultation sessions as a venue for collaborative conversations with Tribal officials or their designees. The most recent specific discussion of the Nutrition Standards for All Foods Sold in Schools rule was included in the consultation conducted on August 19, 2015. No questions or comments were raised specific to this rulemaking at that time.

Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rule.

List of Subjects

7 CFR Part 210

Grant programs-education; Grant programs-health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs; Surplus agricultural commodities.

7 CFR Part 220

Grant programs-education; Grant programs-health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs.

Accordingly, for the reasons set forth in the preamble, 7 CFR parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.11:
■ a. Revise paragraph (a)(3);
■ b. Add paragraph (a)(6);
■ c. Remove paragraph (c)(2)(v);
■ d. Paragraph (c)(2)(vi) is redesignated as (c)(2)(v);
■ e. Revise paragraph (d);
■ f. Add paragraph (f)(3)(iv);
■ g. Revise the heading and the first sentence of paragraph (i); and
■ h. Revise paragraph (j);

The revisions and additions read as follows:

§ 210.11 Competitive food service and standards.

(a) * * *

(3) *Entrée item* means an item that is intended as the main dish and is either:

(i) A combination food of meat or meat alternate and whole grain rich food; or

(ii) A combination food of vegetable or fruit and meat or meat alternate; or

(iii) A meat or meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (such as dried beef jerky); or

(iv) A grain only, whole-grain rich entrée that is served as the main dish of the School Breakfast Program reimbursable meal.

* * * * *

(6) *Paired exempt foods* mean food items that have been designated as exempt from one or more of the nutrient requirements individually which are packaged together without any additional ingredients. Such "paired exempt foods" retain their individually designated exemption for total fat, saturated fat, and/or sugar when packaged together and sold but are required to meet the designated calorie and sodium standards specified in §§ 210.11(i) and (j) at all times.

* * * * *

(d) *Fruits and vegetables.* (1) Fresh, frozen and canned fruits with no added ingredients except water or packed in 100 percent fruit juice or light syrup or extra light syrup are exempt from the nutrient standards included in this section.

(2) Fresh and frozen vegetables with no added ingredients except water and canned vegetables that are low sodium or no salt added that contain no added fat are exempt from the nutrient standards included in this section.

* * * * *

(f) * * *
(3) * * *

(iv) Whole eggs with no added fat are exempt from the total fat and saturated fat standards but are subject to the trans fat, calorie and sodium standards.

* * * * *

(i) *Calorie and sodium content for snack items and side dishes sold as competitive foods.* Snack items and side dishes sold as competitive foods must have not more than 200 calories and 200 mg of sodium per item as packaged or served, including the calories and sodium contained in any added accompaniments such as butter, cream cheese, salad dressing, etc., and must meet all of the other nutrient standards in this section. * * *

(j) *Calorie and sodium content for entrée items sold as competitive foods.* Entrée items sold as competitive foods, other than those exempt from the competitive food nutrition standards in paragraph (c)(3)(i) of this section, must have not more than 350 calories and 480 mg of sodium per item as packaged or served, including the calories and sodium contained in any added accompaniments such as butter, cream cheese, salad dressing, etc., and must meet all of the other nutrient standards in this section.

* * * * *

§ 210.11a [Removed]

■ 3. Section 210.11a is removed.

Appendix B to Part 210 [Removed]

■ 4. Appendix B to part 210 is removed.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 5. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

§ 220.12a [Removed]

■ 6. Remove § 220.12a.

Appendix B to Part 220 [Removed and Reserved]

■ 7. Remove and reserve Appendix B to part 220.

Dated: June 21, 2016.

Kevin W. Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2016–17227 Filed 7–28–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

[FNS–2014–0010]

RIN 0584–AE25

Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires all local educational agencies that participate in the National School Lunch and School Breakfast Programs to meet expanded local school wellness policy requirements consistent with the requirements set forth in section 204 of the Healthy, Hunger-Free Kids Act of 2010. The final rule requires each local educational agency to establish minimum content requirements for the local school wellness policies, ensure stakeholder participation in the development and updates of such policies, and periodically assess and disclose to the public schools'

compliance with the local school wellness policies. These regulations are expected to result in local school wellness policies that strengthen the ability of a local educational agency to create a school nutrition environment that promotes students' health, well-being, and ability to learn. In addition, these regulations will increase transparency for the public with regard to school wellness policies and contribute to integrity in the school nutrition program.

DATES: This rule is effective August 29, 2016. Compliance with the provisions of this rule must begin August 29, 2016.

FOR FURTHER INFORMATION CONTACT: Tina Namian, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

The Healthy, Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111–296, required significant changes in the Child Nutrition Programs to give eligible children access to nutrition benefits, improve children's diets and reduce childhood obesity, and strengthen integrity in the Child Nutrition Programs. Section 204 of the HHFKA added a new section 9A to the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1758b) to expand the scope of wellness policies; bring additional stakeholders into the development, implementation, and review of local school wellness policies; and require periodic assessment and public updates on the implementation of the wellness policies. The local school wellness policies are an important tool for parents, local educational agencies (LEAs), and school districts in promoting student wellness and academic success through the National School Lunch Program (NSLP) and School Breakfast Program (SBP).

The local wellness policy requirement was established by the Child Nutrition and WIC Reauthorization Act of 2004, and further strengthened by the HHFKA. As of school year (SY) 2006–2007, all LEAs participating in the NSLP and/or SBP were required to establish a local school wellness policy to promote the health of students and address the growing problem of childhood obesity. The responsibility for developing a local school wellness policy was placed at the LEA level so the unique needs of each school under the jurisdiction of the LEA can be addressed. By SY 2010, 99 percent of students in public schools were enrolled in a district that had a wellness policy in place. However, far fewer students were in a district that specifically required all five wellness policy elements: Nutrition education, school meals, physical activity, implementation and evaluation, and competitive foods.[1]

HHFKA authorized the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) to consult with the Departments of Education (ED) and Health and Human Services (HHS), acting through the Centers for Disease Control and Prevention (CDC), to provide information and technical assistance to local educational agencies, school food authorities, and State educational agencies for use in establishing healthy school environments that are intended to promote student health and wellness. FNS worked with other Federal agencies and national partners to conduct several needs assessment activities with stakeholders and create a comprehensive school nutrition environment and wellness resources Web site available at *http://healthymeals.nal.usda.gov/school-wellness-resources-2.* FNS also developed a customizable model local school wellness policy template, published a resource featuring stories from schools that have put wellness policies into action, and issued a joint statement of collaboration with over two dozen national associations and organizations in support of local school wellness policies, and more. FNS will update existing technical assistance materials with the final regulatory changes and continue to work with partners to provide technical assistance that is consistent with the specific needs of local educational agencies.

FNS issued a proposed rule (79 FR 10693) on February 26, 2014, seeking to amend the NSLP and SBP regulations to expand the wellness policy requirements consistent with amendments made to the NSLA by the HHFKA. The rule proposed specific content for the local school wellness policies. At a minimum, policies were required to include:

- Specific goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness and rely on evidence-based strategies.
- Standards and nutrition guidelines for all foods and beverages available for sale on the school campus during the school day consistent with applicable Federal meal pattern and competitive food regulations.
- Standards for all other foods and beverages available on campus, but not sold, such as those provided at classroom parties and school celebrations and as rewards and incentives.

The proposed rule also required LEAs to establish, at a minimum, wellness policy leadership of one or more LEA and/or school official(s) who have the authority and responsibility to ensure each school complies with the policy. It also proposed stakeholder participation in the development of such policies, periodic assessment of local school wellness policy compliance, and public updates on the progress toward achieving the goals of the local wellness policy.

II. Summary of Changes to Proposed Rule

As discussed in more detail below, following publication of the proposed rule, FNS considered commenters' concerns and suggestions on the proposal. The following is a summary of the changes and clarifications being made in this final rule at 7 CFR part 210.

Administrative Reviews

The final rule requires the State agency to ensure that the LEA complies with the local school wellness policy requirements. This provision was proposed at § 210.18(h)(7), but will be codified at § 210.18(h)(8).

Nutrition Guidelines for All Foods

The final rule clarifies that, in addition to including nutrition guidelines for all foods offered to students for sale that are consistent with the meal pattern requirements and nutrition standards for competitive foods, the local school wellness policy also must include standards for other, non-sold foods and beverages made available on the school campus during the school day. See § 210.30(c)(2) and § 210.30(c)(3).

Policies for Food and Beverage Marketing

The final rule clarifies that in-school marketing of food and beverage items must meet competitive foods standards. See § 210.30(c)(3).

Additionally, the final rule clarifies what is and is not subject to policies for food and beverage marketing in schools. See § 210.30(c)(3).

Implementation, Assessments and Updates

The final rule requires each LEA to assess compliance with its local school wellness policy and make this assessment available to the public at least once every three years, but removes the requirement for LEAs to annually report progress of local school wellness policies. See § 210.30(e)(2).

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[1] *http://www.bridgingthegapresearch.org/_asset/13s2jm/WP_2013_report.pdf.*

Recordkeeping

The final rule establishes that records retained by LEAs must include, at a minimum, the written local school wellness policy, documentation demonstrating compliance with community involvement requirements, documentation of the triennial assessment, and documentation to demonstrate compliance with the public notification requirements in § 210.30(f).

Implementation Timeline

The final rule requires LEAs to begin developing a revised local school wellness policy by August 29, 2016. LEAs must fully comply with the requirements of the final rule by June 30, 2017.

III. Public Comments

The proposed rule was published in the **Federal Register** on February 26, 2014 (79 FR 10693). The rule was posted for comment on *www.regulations.gov,* and the public had the opportunity to submit comments on the proposal during a 60-day comment period that ended on April 28, 2014.

FNS appreciates the valuable comments provided by stakeholders and the public. FNS received 57,838 public comments that included 546 distinct submissions, 57,285 form letters that were submitted through four large letter campaigns and four small letter campaigns, and 7 duplicate submissions. Although not all commenters identified their group affiliation or commenter category, commenters included:

- School districts—7.
- Associations (national, State, local and others)—30.
- State and/or local agencies—11.
- Advocacy groups (national and State levels)—52.
- Non-profit organizations—36.

Overall, approximately 57,420 comments voiced support for the proposal and 130 comments expressed opposition. The remaining 288 did not expressly state support or opposition. Supporters stated that local school wellness policies reinforce existing Federal regulations established to promote healthy eating in schools and help create learning environments free from unhealthy commercial influences. They affirmed that strengthening local school wellness policies improves accountability and public transparency with parents, students, and the community. Many organizations commended FNS for developing strong, comprehensive policies that will strengthen the existing regulation and lead to more effective leadership, implementation, and stakeholder involvement.

Proponents noted that childhood obesity is an ongoing concern, and that most children fail to meet not only the Dietary Guidelines for Americans, but also recommendations for daily physical activity. As a result of the high childhood obesity rates, nearly all of the commenters supported local wellness policies that promote healthy eating and physical activity. Commenters also stated that strong, comprehensive school wellness policies are especially important to low-income children who often have inadequate access to healthy food and physical activity and who rely heavily on their schools to fill these gaps. FNS agrees that schools play a powerful role in preparing students for a successful future, and believes that the guidance outlined in this final rule will further support efforts to create a school environment that teaches, supports and encourages students to develop lifelong healthy habits.

Opponents generally expressed concern about the potential for misunderstanding of specific provisions. All comments were considered and, in cases of misunderstandings, clarifications are being made in this final rule. Many of the opponents expressed concern about Federal overreach and others indicated that the proposal could create operational and financial hardship for LEAs.

Some commenters questioned FNS's legal and constitutional authority to regulate nutrition standards for all foods available in schools, and others suggested this requirement is an unfunded mandate. In response to these comments, FNS notes that the HHFKA amended the NSLA to require that local school wellness policies address nutrition guidelines for all foods available to children on the school campus during the school day. USDA provides cash and donated food assistance to States and schools participating in the NSLP and SBP to manage and operate school nutrition programs for children. In exchange, State agencies and participating LEAs agree to comply with the regulations set forth in 7 CFR parts 210, 220, and 245.

Other commenters were not clearly in favor of or opposed to the proposal but requested clarification on specific provisions.

FNS considered all comments in the development of this final rule. FNS greatly appreciates the public comments submitted as they have been essential in developing a final rule that is expected to result in stronger local wellness policies and school environments that support student wellness and achievement. Given the volume and complexity of comments on the proposed rule, FNS developed a comprehensive comment summary and analysis which includes detailed information on the comments, including the source of the comments. The comprehensive comment summary and analysis is available at *http://www.fns.usda.gov/school-meals/local-school-wellness-policy.*

This preamble focuses on general comment themes, most frequent comments, and those that influenced revisions to the proposed rule. The preamble also discusses modifications made to the proposed regulatory text, including paragraph numbering, in response to public input. To view all public comments received on the proposed rule, go to *www.regulations.gov* and search for public submissions under docket number FNS–2014–0010. Once the search results populate, click on the blue text titled, "Open Docket Folder."

The following is a summary of the public comments on the key provisions.

Administrative Reviews

Proposed Rule: The proposed rule at § 210.18(h)(7) would require State agencies to ensure school food authorities (SFAs) comply with local school wellness policy requirements as part of the general areas of the administrative review. State agencies conduct administrative reviews of LEAs at least once every three years.

Public Comments: Sixty commenters addressed the administrative review provision in the proposed rule. Fifty commenters supported the proposed requirement and stated that incorporating compliance with local school wellness policies into the administrative review will promote more effective implementation of the policies.

Ten commenters expressed their opposition to the proposed monitoring and oversight requirements stating it will reduce the ability of staff to provide technical assistance to schools and places an undue burden on State nutrition program staff. A coalition of school districts and five individuals recommended placing the responsibility for compliance on the LEA, rather than the SFA, since the food service department does not have the authority to control all elements of the wellness policies. Some commenters asked FNS to explain the enforcement strategy and the documents needed to show compliance with the requirements.

FNS response: FNS recognizes that the first few years of implementation may be a period of transition as strengthening local school wellness policies may involve significant changes for some LEAs. During this transition period, State agencies are expected to focus on providing guidance and technical assistance to help LEAs move toward compliance. State agencies should work closely with LEAs experiencing challenges to help them resolve unique issues. In order to assist LEAs in implementing these requirements, FNS will continue to provide support to States. This will include identifying best practices and success stories and sharing other technical assistance materials that will assist LEAs in developing, updating, and assessing their policies.

FNS also recognizes that local school wellness policy compliance must be the responsibility of the LEA, since the provisions of the NSLA, as amended by HHFKA, place responsibility for all other aspects of local school wellness policy implementation on the LEA. Accordingly, this final rule clarifies that the responsibility is at the LEA level rather than the SFA level and codifies the State agency's monitoring responsibilities in § 210.18(h)(8).

Pursuant to provisions of the NSLA amended by HHFKA, State agencies conduct administrative reviews at least once every three years. When program responsibilities fall to entities outside of school food service, the State agency must assess the compliance of the LEA's program responsibilities. FNS recognizes that LEAs will need time to fully develop their updated policies. During administrative reviews conducted in SY 2016–2017, State agencies should focus on providing technical assistance on the development and implementation of new local wellness policies. Full compliance will be expected by June 30, 2017, and therefore, will be assessed in administrative reviews conducted during SY 2017–2018. Information on the content of the review and methods States can use to assess compliance with local school wellness policies will be provided through an update to the Administrative Review Manual and related tools and forms for SY 2017–2018. As part of the general areas of review, the State agency is expected to examine records, including:

- A copy of the current Local School Wellness Policy;
- Documentation demonstrating the Local School Wellness Policy has been made available to the public;
- Documentation of efforts to review and update the Local School Wellness Policy, including an indication of who is involved in the update and methods the district uses to make stakeholders aware of their ability to participate;
- The most recent assessment on the implementation of the Local School Wellness Policy; and
- Documentation demonstrating the most recent assessment on the implementation of the Local School Wellness Policy has been made available to the public.

Definitions

Proposed Rule: FNS proposed in § 210.30(b) to use the definitions for the terms *school campus* and *school day* codified in the competitive foods regulations at § 210.11(a) for the purpose of the local school wellness policies. *School campus* is defined as all areas of the property under the jurisdiction of the school that are accessible to students during the school day. *School day* is defined as the period from the midnight before to 30 minutes after the end of the official school day.

Public Comments: The definitions in the proposed rule were addressed by 2,434 commenters, and some commenters provided suggested alternative model language. Most of these comments were submitted as part of several form letter campaigns. A State department of education commenter recommended the definitions for school campus and school day be included in the rule rather than cross-referencing § 210.11(a). A health research and policy organization expressed support for the proposed definition of school campus while an individual commenter suggested the definition of school campus be limited to areas where breakfast and lunch are served.

Several commenters were concerned with the proposed definitions. An individual commenter was concerned that the proposed definition of school day was too narrow and would force their school's weekend meal program to terminate because the meals do not meet competitive foods standards. Some commenters suggested the definition of school day be expanded to apply to extracurricular activities, to ensure that students are provided healthy options during after-school events including athletic events.

Approximately 2,420 commenters stated that other terms should be defined in § 210.30(b) of the final regulations and provided suggested model language to define those terms. Most of these comments were submitted as part of several form letter campaigns. Commenters encouraged FNS to include specific definitions of local school wellness policy, nutrition promotion and education, physical activity, physical education, and food and beverage marketing. Some commenters expressed concerns that the proposed rule failed to direct schools to include efforts to expand participation in the healthy school meals programs and suggested including definitions of "student wellness" and "other school based activities to promote wellness."

Forty commenters, including advocacy groups, education associations, and individuals, recommended that additional terms be defined in the final rule and provided suggested model language to define those terms. The recommended terms include: Brand, copycat snacks, designated local education or school official(s), family engagement, commercial entity, student wellness, and healthy eating. Commenters also suggested defining all foods served at school during the day as competitive foods.

FNS Response: After careful consideration, this final rule maintains the definitions of school campus and school day from § 210.11(a) and does not include additional definitions in § 210.30. FNS acknowledges that additional definitions may increase consistency across LEAs and schools implementing the local school wellness policies. However, defining additional terms would add to existing requirements and limit decision-making at the local level. The ability of LEAs and schools to establish additional standards, including their own definitions or terms, that do not conflict with Federal requirements is consistent with the intent of the HHFKA and with the operation of the Federal school meal programs in general. That local discretion also provides an appropriate level of flexibility to LEAs and schools in crafting policies that reflect their particular circumstances.

As noted above, a few commenters recommended changes to the current definitions of school campus and school day. As proposed, the school campus definition ensures that the local wellness policy addresses locations that are accessible to students. The timeframe for the school day definition starting the "midnight before" ensures that the local wellness policy would apply before school starts to ensure foods and beverages offered during a variety of before-school programs are also addressed. In addition, these terms were previously defined in the competitive foods interim final rule at § 210.11(a) and, if modified, would result in inconsistencies when operating the child nutrition programs. Accordingly, this final rule codifies the definitions for school campus and school day in § 210.30(b), without change.

Establishing a Local School Wellness Policy

Local School Wellness Policy Leadership

Proposed Rule: FNS proposed in § 210.30(e)(1) that each LEA must designate one or more LEA or school official(s) to ensure each participating school complies with the local school wellness policy and proposed in § 210.30(c)(3) that local wellness policies must identify the position of the LEA or school official(s) responsible for oversight of the local school wellness policy to ensure each school's compliance.

Public Comments: The proposed requirements related to local school wellness policy leadership were addressed by approximately 54,800 commenters; 54,790 of these commenters were supportive of the leadership requirement. The majority of these commenters submitted comments as part of several large form letter campaigns. Approximately 60 commenters suggested requiring that LEAs publish the name, position title, and contact information for the designated official. A health advocacy organization recommended that the designated official's private contact information remain confidential. One association and two individuals opposed the proposed requirements stating that they would be unfunded and overly burdensome.

Several commenters, including advocacy organizations and nutrition and education associations, addressed who should be designated responsible for overseeing the wellness policies. Many of these commenters stated that the designated official should be in a position of administrative leadership, preferably the superintendent or the principal. Others recommended that the designated official(s) should be a committee of officials, a district leader, or someone with authority to make decisions and recommendations. Many commenters suggested more than one person should be appointed to assist the designated official.

FNS Response: The final rule requires LEAs to identify only the position title of the LEA or school official(s) responsible for oversight. FNS agrees that the community should be able to easily access the designated official(s) to provide suggestions and for accountability purposes, but that LEA's should not be required to publicize an individual's private contact information. However, we strongly encourage LEAs to provide a means of contacting the LEA or school official(s) responsible for oversight by designating an LEA or school-based phone number and/or email address for this purpose.

In response to comments regarding who should be designated responsible for overseeing the wellness policies, this final rule allows LEA discretion. The LEA is most qualified to identify the best candidate for local school wellness policy leadership as size, resources, and needs vary greatly among LEAs and schools. Accordingly, this final rule codifies in § 210.30(c)(4) the leadership requirements proposed in § 210.30(e)(1) and § 210.30(c)(3).

Public Involvement in Local School Wellness Policy Development

Proposed Rule: FNS proposed in § 210.30(d)(1) that each LEA must allow parents, students, representatives of the SFA, teachers of physical education, school health professionals, the school board, school administrators, and the general public to participate in the development, implementation, and periodic review and update of the local school wellness policy, and in § 210.30(c)(4) that LEAs include in the written local school wellness policy a plan for involving those stakeholders.

Public Comments: The public involvement provisions in § 210.30(d)(1) and § 210.30(c)(4) of the proposed rule were addressed by approximately 54,900 commenters. The majority of these commenters submitted comments as part of several large form letter campaigns. Approximately 54,840 commenters stated support for the proposed rule's requirements related to community and public involvement in local school wellness policy development. Commenters provided the following reasons for supporting the public involvement requirements:

- Broad stakeholder involvement ensures coordination across the school environment and throughout the community.
- Transparency and inclusion are important aspects of the implementation process.
- No single department or group has all of the necessary information to develop comprehensive policies.
- Parents spend the most time with their children and best understand their children's food habits and choices.

Nine commenters expressed their opposition to public involvement stating the requirements would be overly burdensome. Many of them recommended that FNS require, rather than encourage, LEAs to make wellness committee member's names, position titles, and relationship to the school available to the public, but not their contact information. Several commenters suggested that FNS require, rather than permit, involvement from specific categories of stakeholders on local school wellness policy committees. Most of those commenters also suggested that FNS require parent involvement on the committees. Several commenters expressed concern that the language of the proposed rule was too vague and could allow LEAs and schools to hand select participants or reduce parent participation. Ten commenters provided additional categories of stakeholders they wanted FNS to either specifically identify in the final rule or encourage LEAs and schools to consider, such as student representatives, paraprofessionals, and classroom teachers to name a few.

FNS Response: In response to commenters' concerns about omitting important stakeholders, this final rule requires LEAs to allow parents, students, SFA representatives, teachers of physical education, school health professionals, the school board, school administrators, and members of the general public to participate in the development, implementation, and periodic review and update of the local school wellness policy. LEAs are also encouraged to include Supplemental Nutrition Assistance Program Education (SNAP–ED) coordinators or educators on the local school wellness policy committee, as appropriate.

However, LEAs have discretion in exactly how they implement this requirement. While FNS expects LEAs to actively seek members for the local school wellness policy committee that represent the categories described in the statute, and to the extent practicable, allow them to participate, there are a variety of factors to consider when seeking the right combination of representatives. Each LEA is best suited to determine the distinctive needs of the community it serves. For example, school health professionals may include a health education teacher, school health services staff, or a social services staff. An example of the general public may include a local dietitian, business representative, health care professional or community or civil leader interested in children, nutrition, education, health, and physical activity.

Once members of the local school wellness policy committee are identified, the LEA is encouraged to make available to the public and school community, a list of names and position titles (or relationship to the school) of individuals who are a part of the wellness policy committee; as well as the name, position title, and school-based contact information of the lead individual(s) or coordinator(s) for the LEA, and for each school as applicable. Committee members can be identified on the LEA or school's Web site, in parent newsletters, or in other regular channels of communication that the LEA utilizes.

Accordingly, this final rule codifies in § 210.30(d)(1) the requirement that LEAs allow certain stakeholders to participate in the development, implementation, and periodic review and updating of the local school wellness policy. The rule also codifies in § 210.30(c)(5) the requirement proposed in § 210.30(c)(3) that LEAs include in the written local school wellness policy a plan for involving the required stakeholders.

Content of the Local School Wellness Policy

Nutrition Promotion and Education, Physical Activity, and Other School-Based Activities

Proposed Rule: Under proposed § 210.30(c)(1), local school wellness policies must include specific goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness. In developing these goals, LEAs must review and consider evidence-based strategies and techniques.

Public Comments: Approximately 54,700 commenters addressed the proposed content of the local school wellness policy. The majority of these commenters submitted comments as part of several large form letter campaigns. Only two commenters, including a coalition of school districts and an individual, generally opposed the proposal, while the majority of commenters stated support.

Approximately 200 commenters stated specific support for the inclusion of nutrition promotion and education components in local school wellness policies. Most of these comments were submitted as part of two form letter campaigns. Commenters suggested that FNS include a recommended amount of nutrition education. An advocacy organization suggested 30–50 hours per year and an association suggested 50 hours per year. Commenters also suggested activities for nutrition education that were not included in the proposal, including cooking with children, social marketing for members of the school community, educating students about food systems, utilizing school gardens and farm-to-school programs as vehicles for nutrition education, and inviting parents to participate in physical activity opportunities and school meals.

Approximately 2,700 commenters mentioned they were in favor of including a physical activity component in local school wellness policies. Most of these comments were submitted as part of two form letter campaigns. Approximately 80 commenters submitted other comments related to the inclusion of a physical activity component and many of these commenters stated that shared use of facilities is an important way to foster physical activity opportunities. Some commenters, including education associations, health associations and advocacy organizations, suggested that FNS require, rather than recommend, 60 minutes of physical activity per day. Several commenters suggested requiring other minimum daily times for physical activity including 50 minutes a day, at least 30 minutes a day, and at least 15 minutes for every 1.5 hours of classroom instruction. A health advocacy organization also recommended that FNS require moderate to vigorous physical activity during 50 percent or more of physical education class time. In addition to comments on physical activity, 20 commenters recommended including a physical education component as a required goal in local school wellness policies. Other comments addressed class frequency and size, teacher qualifications, teacher training, and benefits of physical education.

Approximately 150 commenters stated support for including an educational component related to school-based activities other than nutrition education and promotion, and physical activity in local school wellness policies. Most of these comments were submitted as part of a form letter campaign. Two advocacy organizations and a local department of health suggested that FNS include in the final rule examples of other school-based activities and programs that promote a healthy school environment. These commenters also recommended specific examples including Smarter Lunchrooms, farm to school, recess before lunch, the HealthierUS School Challenge, and others. A commenter also recommended that FNS require goals ensuring students have adequate time to eat.

Five commenters, including State departments of education and an advocacy organization, stated support for, and a State department of education expressed opposition to, the proposed requirement that LEAs consider evidence-based strategies and techniques in establishing goals for nutrition promotion and education, physical activity and other school-based activities that promote student wellness. The opponent raised concerns about LEAs having the resources or capacity to review evidence-based strategies in establishing goals. Two commenters, an advocacy organization and a department of health, encouraged FNS to require LEAs to review Smarter Lunchroom tools and strategies to incorporate some of the low- and no-cost strategies in the wellness policies.

FNS Response: This final rule requires the local school wellness policy to include measurable goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness. In developing these goals, LEAs must review and consider evidence-based strategies and techniques.

Nutrition education teaches behavior-focused skills and may be offered as part of a comprehensive, standards-based program designed to provide students with the knowledge and skills necessary to safeguard their health and make positive choices regarding food and nutrition. A standards-based program is a system of instruction, assessment, grading, and reporting based on students demonstrating understanding of the knowledge and skills they are expected to learn. FNS does not recommend a specific number of hours for nutrition education, but instead that nutrition education is part of comprehensive health education curricula as well as integrated into other core subjects, such as math, science, language arts, and social sciences. FNS' Team Nutrition initiative has standards-based lesson plans and curricula for pre-kindergarten through Grade 8, available free of charge for schools that participate in Federal child nutrition programs (*http://www.fns.usda.gov/tn/resource-library*). The amount of time recommended for nutrition education is dependent on many factors including expected results, content of curriculum, and quality of instruction. Local school wellness policy goals related to nutrition education may include activities such as integrating nutrition education into other academic subjects, including nutrition education as part of health education classes and/or stand-alone courses for all grade-levels, and any other activities that are appropriate such as those suggested above by commenters.

Although FNS sets the standards for the operation of school meal programs, FNS does not have the authority to require a minimum time for physical activity during the school day. The Richard B. Russell National School Lunch Act, section 12(c), 42 U.S.C. 1760(c), prohibits USDA from imposing any requirement in relation to curriculum and methods of instruction. This includes prohibiting USDA from imposing a specific instruction time requirement for the nutrition education component. USDA has long adhered to the position that the intent of the provision is to allow LEAs to retain the primary authority to manage their school day, but understands commenters' concerns related to physical activity and appreciates recommendations for a daily requirement.

FNS agrees with commenters that 60 minutes of physical activity is important for students to achieve and maintain optimal health. The Centers for Disease Control and Prevention (CDC) recommends 60 minutes of physical activity each day for children and adolescents.[2] While it may be difficult for schools to meet the recommended requirement due to other demands, FNS strongly encourages schools to offer time for students to meet the 60 minute goal since children spend many hours of their day at school. Some recommendations for fitting physical activity into the school day include outdoor and indoor recess, classroom-based physical activity breaks, and opportunities for physical activity before and after school to increase focus or teach academic content via physical movement.

Physical education was not included as a required element of the local school wellness policy in the proposed rule. However, FNS agrees that physical education opportunities complement a healthy school environment by instilling an understanding of the short-term and long-term benefits of a physically active and healthy lifestyle and FNS encourages LEAs and schools to offer physical education for every grade level.

FNS appreciates comments and suggestions for other school-based activities supporting nutrition and health, and encourages LEAs to consider commenters' suggestions when developing or updating their local school wellness policies. Local school wellness policies could include the availability of safe facilities and equipment in sufficient quantities for all students to be active (including the frequency of inspections and replacements, as necessary); the community use of school grounds/facilities for physical activity outside of school hours; and strategies/events to promote safe, active routes to school (for example, "walk to school day," crossing guards stationed around the school, and bicycle parking). Further examples of other school-based activities that may be included into the local school wellness policy could include offering staff wellness activities and professional development opportunities related to health and nutrition, applying for or being awarded a Healthier US School Challenge, Smarter Lunchrooms recognition, sponsoring health fairs, offering a TV turnoff week, and promoting family wellness activities. Local school wellness policies also may include the development and/or promotion of farm to school activities, such as school gardens, nutrition, culinary, and agriculture education, and use of local foods in child nutrition programs (for more information, see *www.fns.usda.gov/farmtoschool*).

While nutrition education and promotion and physical activity are critical components in providing a healthy school nutrition environment, other school activities supporting nutrition and health are equally important. Wellness policy activities can and should be integrated across the entire school setting rather than limited to the cafeteria, other food and beverage venues, and school physical activity facilities. An LEA can take a coordinated approach to developing and implementing a wellness policy by addressing nutrition and physical activity through health education, physical education, school nutrition services, the physical environment, such as school gardens, family engagement, community involvement, health services, and social services.[3]

Under the final rule at § 210.30(c)(1), LEAs are also required to review and consider evidence-based strategies and techniques in establishing goals for nutrition promotion and education, physical activity, and other school based activities that promote student wellness. At a minimum, FNS expects LEAs to review "Smarter Lunchroom" tools and strategies, which are evidence-based, simple, low-cost or no-cost changes that are shown to improve student participation in the school meals program while encouraging consumption of more whole grains, fruits, vegetables, and legumes, and decreasing plate waste (for more information, see *https://healthymeals.nal.usda.gov/healthierus-school-challenge-resources/smarter-lunchrooms*). The following are examples of evidence-based strategies that have been shown to improve the likelihood that children will make the healthier choice: using creative names for fruits and vegetables and targeted entrees, training staff to prompt students to select fruits and vegetables, placing unflavored milk in front of other beverage choices, and bundling "grab and go" meals that include fruit and vegetable items.

Accordingly, this final rule codifies § 210.30(c)(1) to include goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness. In developing these goals, LEAs must review and consider evidence-based strategies and techniques.

Nutrition Guidelines for All Foods

Proposed Rule: The proposed rule would require in § 210.30(c)(2) that the local school wellness policy include nutrition guidelines for all foods and beverages available to students on each participating school campus under the LEA during the school day. This requirement, consistent with HHFKA, ensures that policies include guidance about foods and beverages available for sale that is consistent with the regulations governing school meals and competitive foods for sale in schools (Smart Snacks in Schools), and also encourages districts to establish standards for foods made available, but not sold, during the school day on school campuses.

Public Comments: Approximately 55,000 commenters stated support for wellness policies including nutrition guidelines for all foods available in schools. The majority of these commenters submitted comments as part of several large form letter campaigns. Only four individuals generally opposed the proposed requirement. Other comments opposed application of the nutrition guidelines in certain specific settings or under specific circumstances. Approximately 20 commenters specifically opposed requiring that local school wellness policies containing nutrition guidelines for food sold during school fundraisers be consistent with the competitive food standards established in § 210.11. An additional 30 commenters opposed the requirement that food and beverages served during classroom parties be consistent with competitive food standards.

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[2] U.S. Department of Health and Human Services. *2008 Physical Activity Guidelines for Americans.* Washington (DC): U.S. Department of Health and Human Services; 2008. ODPHP Publication No. U0036. Available at: *http://www.health.gov/paguidelines.*

[3] *http://www.cdc.gov/healthyyouth/wscc/index.htm.*

Approximately 60 commenters generally addressed the requirement that local wellness policies include nutrition guidelines for foods that are available but not sold on school campuses during the school day. Most of those commenters expressed general support and five commenters generally opposed the requirement. Others suggested that FNS encourage, but not require, that the wellness policies contain guidelines that are consistent with the competitive foods standards for foods available, but not sold on school campuses.

A few commenters expressed support but many commenters opposed requiring foods served during classroom parties and school celebrations to be consistent with competitive food standards. Most commenters opposed to the requirement, stated that telling parents what they can and cannot bring to school for classroom parties is overreach by the Federal Government. Commenters also specifically addressed policies governing food-related rewards and incentives, and several commented that foods used as rewards and incentives should not have to meet competitive food standards.

FNS Response: Section 9A(b)(2)(A) of the NSLA, 42 U.S.C. 1758b(b)(2)(A) requires that each local school wellness policy must include nutrition guidelines for all foods and beverages available for sale on the school campus during the school day to ensure they are consistent with the statutory and regulatory provisions governing school meals (§§ 220.8 and 220.10) and competitive foods (§ 210.11) as applicable. HHFKA also requires that the policy address standards for foods and beverages available on the school campus during the school day that are not sold (for example, foods provided at classroom parties and school celebrations and food offered as rewards and incentives). Standards included in the local school wellness policy for sold and non-sold foods could include information on the types of foods and beverages available on the school campus during the school day, and as appropriate and applicable, the general or specific nutrient profile of those foods and beverages. FNS encourages LEAs to support lifelong healthy eating habits as well as consider the nutrition and energy needs of children when establishing standards for these foods and beverages.

It is important to remember that the Federal competitive food standards are minimum standards. State agencies and LEAs have discretion to adopt more stringent standards for the types of food and beverages allowed to be sold and also may limit the frequency of fundraisers that may include foods that do not meet Federal competitive foods standards. A local school wellness policy can be an excellent tool for establishing LEA-specific standards and communicating them to students, parents, and other stakeholders. Further, local school wellness policies can serve as a vehicle to explain to the public and the school community the nutrition standards for school meals as well as other State or local policies related to school meals, other foods available in schools, and broader wellness policies.

Neither the proposed rule nor this final rule would require schools to apply competitive food standards to foods and beverages that are simply available but not sold in school during the school day. Foods sold must meet competitive foods and meal pattern requirements, unless exempted under law or regulations, but foods available for classroom parties or provided as a reward to students are not required to meet those same standards. LEAs simply need to have a policy in place that addresses foods provided in school, but not made available for sale. Because local governments are in the best position to make individual food choices for their communities, FNS agrees that decisions about foods available in school during the school day should be made at the LEA or school level with community input. The proposed rule did not delineate the standards LEAs were required to use when developing policies for foods and beverages provided on campus, but not available for sale. Instead, FNS provided examples of policies that LEAs may want to address, including those related to classroom parties or school celebrations that involve food, food-related rewards or incentives, and other State or local policies or nutrition standards for foods and beverages available that promote student health and reduce childhood obesity. This rule does not require LEAs to address standards for food brought from home for individual consumption.

To clarify the difference in requirements between all foods sold and all foods provided, but not sold, during the school day, FNS has separated these provisions in the final rule. The final rule requires that the local school wellness policy include standards and nutrition guidelines for all foods sold in schools and requires that those guidelines are consistent with the applicable Federal school meal requirements and competitive foods standards, as defined by statute and regulation. In addition, the final rule requires that local school wellness policies include standards for all foods provided, but not sold, in schools during the school day. However, the final rule does not require that local school wellness policy standards for foods provided in schools during the school day but not available for sale conform to the school meal requirements or the competitive foods standards. Again, it should be noted that with regard to foods provided, but not sold, in schools, local jurisdictions have the discretion to adopt standards that conform to Federal school meal and competitive food standards or to adopt more or less stringent standards.

Accordingly, this final rule codifies in § 210.30(c)(2) a provision requiring that local school wellness policies include a local jurisdictions' own standards for all foods and beverages provided, but not sold, during the school day on each participating school campus In addition, this final rule includes a new paragraph § 210.30(c)(3) that incorporates the proposed provision requiring local school wellness policies to include nutrition guidelines for all foods sold under the jurisdiction of the local educational agency that are consistent with the applicable school meal requirements and competitive food standards.

Policies for Food and Beverage Marketing

Proposed Rule: FNS proposed in § 210.30(c)(2)(iii) that local school wellness policies permit marketing on the school campus during the school day of only those foods and beverages that meet the competitive foods requirements.

Public Comments: The proposed requirement that local school wellness policies restrict food and beverage marketing in schools was addressed by approximately 57,300 commenters. Most of those comments were submitted as part of several large form letter campaigns. Most of the commenters expressed support for the proposed requirement, while only eight commenters generally opposed the requirement that local school wellness policies include a component restricting food and beverage marketing. A few commenters questioned USDA's authority to regulate food and beverage marketing in schools while one commenter stated the proposed limitations on marketing did not go far enough. A school district and an individual suggested the restriction would be a burden to schools.

Eighty commenters who were generally supportive of the proposed food and beverage marketing restrictions stated that the competitive food nutrition standards should be the minimum standard for food and beverage marketing policies. Most of these commenters further stated that LEAs should be assured that they are free to implement stronger standards for marketing, including extending the marketing standards beyond the school day, using local or State competitive food standards if those local or State standards go beyond the Federal competitive food standards, or restricting all marketing of food and beverages in schools. Seven commenters recommended that FNS should allow in-school marketing of food and beverage items that fit within the NSLP and SBP nutrition standards.

Approximately 200 commenters stated that there should be a prohibition against brand marketing unless every food and beverage product manufactured, sold, or distributed under the brand name meets the competitive foods nutrition standards or the school's more stringent competitive food standards. Most of those comments were submitted as part of two form letter campaigns. Two advocacy organizations also addressed the issue of copycat products, where a company reformulates one product in a brand's otherwise unhealthy product portfolio to meet school nutrition standards. These commenters stated that the marketing of such products should be explicitly prohibited by local school wellness policies because they undermine school nutrition education efforts and overall healthy eating.

Commenters provided examples of other types of food and beverage marketing that should be prohibited or otherwise restricted by the final rule including incentive programs and other corporate-sponsored programs; advertisements on school-owned, leased, operated, or used buildings, equipment, supplies, etc.; market research activities; free samples; and corporate-sponsored scholarships. Additionally, most of those commenters urged FNS to clarify that materials developed for academic settings such as curricula, textbooks, Web sites, and radio and television content sponsored by companies, should all be covered by the policy.

Commenters also provided examples of other types of food and beverage marketing that should not be prohibited or otherwise restricted by the final rule. A large number of those commenters said that materials used for educational purposes, with incidental marketing, should not be prohibited.

Several commenters suggested that corporate-sponsored activities where there is only an incidental or unintentional advertising impact should be exempt from the marketing restriction. A commenter asked FNS to clarify that the regulation is intended to address only communications intentionally directed to the school environment as opposed to communications that may incidentally reach the school environment. Another commenter sought clarification as to whether partnerships with community restaurants who sponsor fundraising nights where a portion of the restaurant's profits that night go to the school would be considered food and beverage marketing, and therefore prohibited by the rule.

FNS Response: For purposes of this final rule, marketing is defined as advertising and other promotions in schools. Food marketing commonly includes oral, written, or graphic statements made for the purpose of promoting the sale of a food or beverage product made by the producer, manufacturer, seller, or any other entity with a commercial interest in the product.[4] Food and beverage marketing are commonly present in areas of the school campus that are owned or leased by the school and used at any time for school-related activities such as the school building or on the school campus, including on the outside of the school building, areas adjacent to the school building, school buses or other vehicles used to transport students, athletic fields and stadiums (*e.g.,* on scoreboards, coolers, cups, and water bottles), or parking lots.

FNS agrees with the majority of commenters who support permitting marketing on the school campus during the school day of only those foods and beverages that meet competitive foods standards. Food and beverage marketing is prevalent in schools, and the majority of foods and beverages marketed to children are low in nutritional value and high in fat and sodium.[5] Many of the foods and beverages that are heavily marketed to children contribute to poor diet quality, high calorie intake, and excess weight gain.[6] However, the majority of schools do not have policies restricting food and beverage marketing to children. Therefore, in this final rule, for those LEAs that choose to allow marketing of food and beverages to students, the LEAs are required to include in their local school wellness plans policies that allow the marketing of only those foods and beverages that may be sold on the school campus during the school day (*i.e.,* that meet the competitive foods standards).

The marketing of products on the exterior of vending machines, through posters, menu boards, coolers, trash cans, and other food service equipment, as well as cups used for beverage dispensing are all subject to local school wellness policy standards. Under these standards, the logos and products marketed in these areas and items are required to meet the competitive foods standards for foods sold in schools.

Although the Federal Local Wellness policy standards for marketing do not apply to marketing that occurs at events outside of school hours such as after school sporting or any other events, including school fundraising events, LEAs have discretion to enact broader policies that address these situations.

The rule does not require schools to immediately replace menu boards, coolers, tray liners, beverage cups, and other food service equipment with depictions of noncompliant products or logos to comply with new local school wellness policy standards. This final rule also is not intended to require that an LEA must remove or replace an existing scoreboard on a sports field or in a gymnasium in order to comply with this requirement. However, as the school nutrition services review/consider new contracts and as scoreboards or other such durable equipment are replaced or updated over time, replacement and purchasing decisions should reflect the applicable marketing guidelines established by the LEA in the wellness policy.

This final rule does not require local school wellness policies to include standards that establish limits on personal expression, opinions, or products. For example, this regulation would not apply to clothing or personal items used by students or staff, or the packaging of products brought from home for personal consumption. In addition, the requirements of the final rule for local school wellness policies do not apply to materials used for educational purposes in the classroom, such as teachers' use of soda advertisements as a media education tool; or when implementing a health or nutrition education curriculum. It is also not intended to imply that schools must allow food or beverage marketing on campus. This regulation requires local school wellness plans to establish only minimum standards for food and beverage marketing restrictions. State agencies and LEAs may choose to adopt more stringent policies for food and beverage marketing.

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[4] National Policy & Legal Analysis Network to Prevent Childhood Obesity. District Policy Restricting Food and Beverage Advertising on School Grounds. Available from: *http://changelabsolutions.org/publications/district-policy-school-food-ads.*

[5] Federal Trade Commission. *A Review of Food Marketing to Children and Adolescents: Follow Up Report, 2012. https://www.ftc.gov/sites/default/files/documents/reports/review-food-marketing-children-and-adolescents-follow-report/121221foodmarketingreport.pdf.*

[6] Cheyne A, Mejia P, Nixon L, Dorfman L. *Food and Beverage Marketing to Youth. Current Obesity Reports.* 2014. *http://www.bmsg.org/sites/default/files/bmsg_food_and_bev_mktg_to_youth.pdf.*

FNS would like to respond to the recommendation that the final rule allow in-school marketing of foods and beverages that meet the NSLP and SBP meal pattern standards. School meals are considered a unit that is comprised of several food components. Alternatively, competitive foods standards look at the nutrition standards of an individual food item. Because school meal programs do not have standards for individual food items, it would be difficult, and even inconsistent, to allow marketing of foods and beverages that "meet the school meal patterns."

Regarding brand marketing and copycat products, FNS understands commenters' concerns with companies advertising brands that market unhealthy foods in addition to healthy food products. The final rule provides discretion enabling LEAs to determine what is in the best interest of their respective school communities. LEAs may choose to include a more stringent marketing standard for brand marketing and copycat products in their local school wellness policy; they may simply eliminate advertising of all brands that market unhealthy foods; or they may allow both brand marketing and copycat products to be marketed in schools as long as food and beverages to be marketed in schools as long as they meet competitive foods standards.

Accordingly, this final rule codifies proposed § 210.30(c)(3)(iii) and permits marketing on the school campus during the school day of only those foods and beverages that meet competitive foods standards in § 210.11.

Public Notification

Proposed Rule: The proposed rule would require in § 210.30(d)(2) that LEAs inform the public about the content of the local school wellness policy and make the local school wellness policy and any updates to the policy available to the public on an annual basis.

Public Comments: General support for the proposed requirement was expressed by approximately 57,200 commenters. Most comments were submitted as parts of several large form letter campaigns. Only a local school nutrition association and a State department of education generally opposed the requirement, stating that it would be an administrative burden on school districts. Approximately 80 of the commenters, including numerous national associations and advocacy organizations, numerous individuals and an institutional investment center, who expressed general support for the proposed requirement that LEAs inform and update the wellness policy specifically expressed support for the proposed requirement that LEAs actively notify households regarding local school wellness policies.

Nine commenters also provided suggestions as to how LEAs and schools can inform the public about the wellness policy and provide as much information as possible about the school nutrition environment. An advocacy organization recommended that FNS require local school wellness policies be posted at the school site, such as in the front office or main entrance. An education association suggested that LEAs be required to post local school wellness policies on the parent or family pages of the LEA or school Web site. Two advocacy organizations also suggested FNS require LEAs to ensure that the local wellness policy and any public announcement related to the policy, is available in the languages that represent the school community.

FNS Response: This final rule retains the requirement in the proposed rule that LEAs or schools must notify households on an annual basis of the availability of the local school wellness policy information and provide information that would enable interested households to obtain additional details. FNS strongly encourages LEAs to provide as much information as possible to their communities about the school nutrition environment. While FNS agrees that sharing the local school wellness policy in many locations is useful in notifying families about the content and implementation of the policy, FNS recognizes that LEAs are best-suited to determine specific methods for publicizing the information, since LEAs communicate with households using various methods.

This final rule, therefore, provides LEAs flexibility to determine the most effective method of providing this notification within their communities. For example, LEAs could post the local school wellness policy on the school or LEA's Web site and send a message to families notifying them of how they may obtain a copy or otherwise access the policy. In addition to the online posting option, a copy of the local school wellness policy could be posted at each physical school site, such as in the front office or main entrance. Furthermore, the LEA could present the information during a meeting with the Parent Teacher Association/Organization, school board, district superintendent, school/district health and wellness committee, or other interested groups or stakeholders. Other examples of methods for public information sharing with the larger community include notifications through local newspapers or the media that link to a Web page on the school or LEA's Web site. FNS strongly recommends LEAs make concerted efforts to ensure that the local school wellness policy and any public announcement related to the policy is available in the languages that represent the school community. LEAs are also required to make available to the public the results of the triennial assessment, and actively notify households of the availability of the assessment results.

Accordingly, this final rule codifies in § 210.30(d)(2), the proposed requirement that LEAs inform the public about the content of the local school wellness policy and make the local school wellness policy and any updates to the policy available to the public on an annual basis.

Implementation, Assessments and Updates

Proposed Rule: Under proposed § 210.30(e)(2) and (e)(3), LEAs must:

- Annually report on each of its schools' progress toward meeting the local school wellness policy goals over the previous school year;
- Assess compliance with local school wellness policies at least once every three years; and
- Make appropriate updates or modifications to the local school wellness policies based on the triennial assessments and annual reports.

Public Comments

Approximately 54,700 commenters addressed the proposed requirements related to implementation, assessments, and updates and most of those commenters stated general support for the proposed requirements. Most of those commenters submitted comments as part of several large form letter campaigns. Twelve commenters, including State departments of education, a school district, and nutrition services departments, stated opposition due to concerns regarding administrative burden and redundancy.

Specifically, commenters expressed concern about the monitoring and reporting burden the proposed rule would place on large school districts. Noting the administrative burden to districts of requiring each individual school to annually report on their wellness policies, an individual commenter recommended that all reporting should be done at the district level. To reduce the burden on LEAs, a State department of education recommended annually reporting progress for the LEA and a representative sample of schools under its jurisdiction. Commenters also suggested FNS provide additional information on how the annual progress report differs from the triennial assessment.

FNS also received comments on the contents and format of annual reports as proposed in § 210.30(e)(2). Commenters recommended including how implementation will be tracked and measured across all schools in each State, as well as how successful implementation will be defined. A local health department suggested collecting Body Mass Index (BMI) data of students to measure outcomes of local school wellness policies. A coalition of advocacy organizations suggested FNS identify specific data elements that should be included in these reports. Several commenters stated the school wellness report card format would be useful for the annual reports, and one commenter suggested FNS require in the final rule that LEAs create an annual school wellness report card and specify the contents of the report card. Another commenter recommended FNS allow districts to use existing data collection methods in order to reduce burden.

In response to FNS' inquiry regarding annual reporting of progress on achieving goals, nine commenters said that the annual frequency of progress reporting would be overly burdensome. They specifically noted that monitoring, reporting, preparing, and publishing progress reports annually would be overly burdensome, especially in a large LEA, and would require significant resources. A commenter, while agreeing that the public should be informed, stated that annual reporting would increase staffing needs. In contrast, a commenter recommended the frequency of progress reports should be at least twice per school year as a means to hold schools accountable.

Commenters also addressed the minimum content requirements of the triennial assessment. Three commenters expressed concern that requiring an LEA to assess each of its schools triennially will be overly burdensome. One State department of education suggested establishing a single standard State model local school wellness policy that all LEAs in the State measure against to ensure consistency in a State. One commenter also recommended FNS issue guidance that provides examples of acceptable model wellness policies.

In response to FNS' inquiry as to whether the three-year frequency would keep the community informed without being overly burdensome to LEAs, a State department of education and a school district nutrition services department indicated it would be too burdensome for small districts, and another commenter agreed the frequency is appropriate. In contrast, one State department of education and one individual stated that three years is too long to wait for feedback and may not be sufficient to ensure schools are on target with their goals.

FNS Response: The final rule eliminates the requirement for LEAs to annually report progress made toward meeting local school wellness policy goals, which was included in the proposed rule. However, this final rule retains the requirement in the proposed rule that each LEA assess, at least once every three years (triennially), compliance with the local wellness policy. LEAs are also required to annually notify the public about the content of the local school wellness policy and any updates to the policy.

The intent of these public updates and policy assessment requirements is to promote public transparency and ensure families, including new school enrollees, have regular and easy access to information about the wellness environment of the school their child attends. In developing the final rule, FNS recognized it was important to balance the need to inform families and the community about the implementation of the local school wellness policy with the potential burden of assessing compliance, particularly for LEAs with a large number of schools. Therefore, this final rule requires, at § 210.30(d)(2), that LEAs inform families and the public each school year of basic information about the local school wellness policy including its content and implementation. LEAs may determine the optimal time for providing the information, although FNS recommends that the information be provided early in the school year.

In the proposed rule, FNS specifically requested commenters' input regarding the frequency of both the annual reporting and assessments, in order to assess and limit the burden for LEAs. As noted above, commenters stated that the annual frequency of progress reporting in addition to triennial assessments would be overly burdensome. FNS agrees and has removed from the final rule the requirement for LEAs to annually report progress of local school wellness policy implementation. This final rule requires at § 210.30(e)(2) an assessment of the local school wellness policy to be conducted, at a minimum, every three years. However, LEAs can choose to assess their policies more frequently to ensure goals and objectives are being met and to refine the policy as needed. The results of this assessment must be made available to the public to showcase the wellness efforts being made by the LEA with indications about how each school under the jurisdiction of the LEA is in compliance with the LEAs' wellness policy. While some commenters also suggested that the triennial assessments would be burdensome, FNS determined there would be less burden for LEAs and schools because the annual reporting requirements have been omitted from the final rule. Additionally, removing the annual reporting requirement eliminates the concern that there would be redundancy in conducting both an annual report and triennial assessment. For LEAs as a whole, eliminating the proposed annual reporting requirement removes an estimated 83,432 hours of burden associated with public disclosure of the proposed report.

There are a variety of methods an LEA may employ to assess compliance by schools and determine progress toward benchmarks, objectives, and goals. Developing a wellness policy with measurable objectives, and realistic annual benchmarks will help when it is time to evaluate progress. Additionally, the local school wellness policy team and leadership can be assets in conducting periodic assessments. Various resources have already been identified or developed to support LEAs with the wellness policy process. These resources can be accessed at USDA's School Nutrition Environment and Wellness Resources Web site (*http://healthymeals.nal.usda.gov/school-wellness-resources*), including resources to support LEAs with assessing implementation of their local school wellness policy (*http://healthymeals.nal.usda.gov/local-wellness-policy-resources/local-school-wellness-policy-process/assessment-monitoring-and*) and model wellness policies (*http://www.fns.usda.gov/school-meals/local-school-wellness-policy*). States are welcome to develop their own models for LEAs within their jurisdiction. FNS will continue to work with ED and HHS to identify and update resources and provide technical assistance in this area.

While annual progress reporting has been removed from the final rule, it is important to note that under § 210.30(d)(2), the annual public notification requirement is still in place. LEAs or schools must notify households of the availability of the local school wellness policy information, including the Web site address or other information that would enable interested households to obtain additional information. FNS strongly encourages LEAs to provide as much information as possible to their communities about the school nutrition environment. As discussed previously in this final rule, at a minimum LEAs must annually inform and update the public about the content and implementation of the local school wellness policy. LEAs must also provide the position title of the designated local agency official(s) or school official(s) leading/coordinating the school wellness policy committee. FNS encourages LEAs or schools to include a summary of each school's events or activities related to local school wellness policy implementation, the name and contact information of the designated local agency official(s) or school official(s) leading/coordinating the school wellness policy committee, and information on how the public can get involved with the school wellness policy committee.

Accordingly, the final rule codifies the triennial assessment requirement in § 210.30(e)(2) and removes the proposed requirements related to the annual progress reports, including provisions that would have required informing the public about progress toward meeting the goals of the local school wellness policy (proposed § 210.30(d)(3)), annual reporting (proposed § 210.30(e)(2)), making updates or modifications based on annual progress reports (proposed § 210.30(e)(4)), and retaining documentation of annual progress reports for recordkeeping (proposed § 210.30(f)(4)).

Recordkeeping Requirement

Proposed Rule: Under proposed § 210.30(f), each LEA must maintain records to document compliance with local school wellness policy requirements. These records include but are not limited to:

- The written local school wellness policy;
- Documentation demonstrating compliance with community involvement requirements, including requirements to make the local school wellness policy, annual progress reports, and triennial assessments available to the public;
- Documentation of the triennial assessment of the local school wellness policy for each school under its jurisdiction; and
- Documentation of annual local school wellness policy progress reports for each school under its jurisdiction.

Public Comments: Approximately 55 commenters addressed the proposed requirement, and of these, 50 commenters expressed support for the proposed recordkeeping requirements. These commenters included various stakeholders, including 28 participants in a form letter campaign. To avoid additional burden on schools, commenters recommended FNS clarify that the annual progress reports and the triennial assessments may be used to meet the recordkeeping requirement.

Two individual commenters stated that the proposed recordkeeping requirements are unnecessary to ensure each LEA has an effective wellness policy. One commenter expressed concern that as a result of the administrative burden, some LEAs may withdraw from the school meal programs.

FNS Response: This final rule establishes that each LEA must retain records to document compliance with the local school wellness policy requirements. FNS recognizes schools have many responsibilities and agrees with commenters that it is important to avoid additional burden on schools. However, it is important to remember that schools already maintain records for their existing local school wellness policies; these records are important for the administrative review of programs because they help document LEA activities regarding the local school wellness policy. Having recordkeeping documents already on file will satisfy administrative review requirements as well as allow the review process to go smoothly, which may ultimately reduce the burden schools face. Based on the number of supportive comments and the reduction in the administrative burden in this final rule due to the elimination of the annual reporting requirement, FNS disagrees that LEAs will withdraw from the school meal program due to the administrative burden associated with local wellness policies. Accordingly, this final rule retains the proposed recordkeeping provision, with the exception of documentation of annual progress reports; records retained by LEAs must include:

- The written local school wellness policy;
- Documentation demonstrating compliance with community involvement requirements;
- Documentation of the triennial assessment of the local school wellness policy; and
- Documentation to demonstrate compliance with the annual public notification requirements.

Documentation demonstrating compliance with community involvement requirements may include, for example, a copy of the solicitation on the LEA/school Web site or school newsletter. Documentation to demonstrate compliance with the public notification requirements may include, for example, a copy of the LEA/school Web page where the local school wellness policy has been posted or a copy of the school newsletter or local newspaper. FNS will work with State agencies to prove technical assistance on documentation requirements and address questions that may arise during implementation. In addition, FNS will continue working with partners to clarify any implementation issues that may impact participation in the NSLP and SBP.

Accordingly, the final rule codifies in § 210.30(f), the proposed requirement that each local educational agency must retain records to document compliance with the requirements of this section.

Related Information

Timeline for Implementation

Proposed Rule: The local school wellness policy proposed rule did not propose a date by which LEAs would need to comply with the proposed requirements.

Public Comments: The timeline for implementing the requirements was addressed by approximately 55,000 commenters. The majority of those comments were submitted as part of several large form letter campaigns.

In general, commenters expressed support for establishing a timeline for implementation and most of the comments urged FNS to finalize the rule quickly and to work with schools to ensure full implementation. Many commenters recommended that FNS require implementation between one and two years after the rule is finalized. A department of education explained that the one to two year requirement would provide LEAs with one year of planning time, which would be needed to develop the new infrastructure, and additional time for implementation.

Several commenters, including two health associations and a coalition of school districts, recommended that FNS require implementation within one year to provide schools adequate preparation time and also ensure that children benefit quickly. A health association suggested implementation during the 2015–16 school year because it would most effectively protect children's health and would provide FNS and schools sufficient time to prepare and implement the standards.

A health advocacy organization suggested specifying the date FNS will release the model policies and best practices, and include a deadline for LEAs to publish their wellness policies. Three commenters recommended the timeline be flexible, allowing LEAs and schools sufficient time to adjust to required changes and to account for the variability in existing wellness policies.

A school district suggested that school districts will need multiple years to develop and transition to the proposed assessment system, especially if no new funding is available. Six individual commenters suggested that FNS require LEAs to implement the policies within one to three years following the date the rule is finalized. Two school food service staff expressed concern over the amount of recent regulations and suggested an extended period for implementation. One of the school food service staff urged FNS to wait until schools have had sufficient time to implement competitive foods nutrition standards and suggested waiting two or more years prior to implementation.

Three commenters addressed potential timelines for implementing the proposed marketing requirements. One of the commenters requested that FNS provide significant time, while another recommended FNS ensure the implementation timeline does not impact current contracts between LEAs and vendors. Another of the commenters suggested a three year timeline stating that it will be a challenge for schools to implement wellness policies concurrently with other requirements.

FNS Response: In response to commenters' concerns, this final rule becomes effective on August 29, 2016. By that date, LEAs must begin developing a revised local school wellness policy. LEAs must fully comply with the requirements of the final rule by June 30, 2017. By SY 2017–2018, LEAs must complete a triennial assessment.

FNS acknowledges the first few years of implementation may be challenging as new groups work together to establish a healthy school nutrition environment. FNS also recognizes that LEAs need planning time to develop the infrastructure and ensure all parties are well informed and trained to meet the new requirements. State agencies and FNS will assist LEAs in the transition to these new requirements by the focusing on technical assistance during administrative reviews to facilitate implementation of the local school wellness policy requirements.

It is important to understand that 99 percent of students in public schools are enrolled in districts that already have wellness policies in place. LEAs and schools have been implementing local school wellness policies since school year 2006, pursuant to Federal requirements. As discussed in the Regulatory Impact Analysis, most schools have local school wellness policies that meet at least some of the requirements under the Child Nutrition Act, and many have incorporated elements that were newly required under HHFKA. However, many LEAs will likely need to update their wellness policies to be in full compliance with this final rule. LEAs may begin or continue implementing these provisions prior to the effective date provided in this final rule. FNS currently has available more than 100 tools and resources on the School Nutrition Environment and Wellness Resources Web site, which LEAs and schools may consult for information and resources on implementing, enhancing, and maintaining local school wellness policies. In addition, FNS continues to regularly offer presentations and webinars to various audiences detailing the requirements of the local school wellness policy.

Accordingly, this final rule is effective on August 29, 2016, as specified in the **DATES** section of this preamble.

IV. Implementation Resources

Healthy eating, physical activity, and wellness among children and adolescents are the goals of several government agencies. In an effort to combine efforts and resources, FNS convened a workgroup including ED and HHS, acting through CDC, in April 2011. This workgroup conducted several needs assessment activities to help determine the training and technical assistance needs of LEAs in implementing the local school wellness policy requirements. Based on this assessment, the workgroup developed a five-year technical assistance plan. The workgroup has identified best practices and success stories for local school wellness policy implementation as well as other technical assistance resources that will support LEAs in developing, updating and assessing their policies.

To assist with implementation of the local school wellness policies, FNS has established a Web site (*http://www.fns.usda.gov/tn/local-school-wellness-policy*) that provides information about the Federal requirements, local process, technical assistance, tools and resources, monitoring, and funding a local school wellness policy. Tools and resources available on this Web site include materials to design, implement, promote, disseminate, and evaluate local school wellness policies, as well as overcome barriers to adoption of local school wellness policies. Furthermore, FNS' Team Nutrition initiative has standards-based lessons plans and curricula for pre-kindergarten through Grade 8, classroom-based lesson plans, recipes, guidance to improve the quality of school meals, and other materials for nutrition education and promotion, including songs, games, posters, videos, event-planning booklet, wellness communication toolkit, school garden activities, and a graphics library. These resources and materials are available free of charge for schools that participate in Federal child nutrition programs (*http://www.fns.usda.gov/tn/resource-library*). These materials also are available to the general public for download at no cost.

In addition, the "School Nutrition Environment and Wellness Resources" Web site, operated by USDA National Agricultural Library's Healthy Meals Resource System (Team Nutrition's training and technical assistance component), helps LEAs find the resources they need to meet the local school wellness policy requirements and recommendations to establish a healthier school nutrition environment (*http://healthymeals.nal.usda.gov/school-wellness-resources*). The "School Nutrition Environment and Wellness Resources" Web site has information and resources on:

- Local School Wellness Policy Process steps to put the policy into action;
- Required Wellness Policy Elements to meet the Federal requirements;
- Healthy School Nutrition Environment improvements related to food and physical activity;
- Samples, Stories, and Guidance ideas for schools including sample model wellness policies, and State school health policies and resources;
- Research Reports on school wellness; and
- Grants and funding opportunities related to child nutrition and physical activity.

FNS and CDC have made available a collection of stories from a diverse group of schools that succeeded in improving students' nutritional and physical activity status through their local school wellness policy. LEAs can read each story to gather implementation ideas on the steps and strategies other schools have used to implement wellness policies, including activities in key areas such as improving school meals and increasing physical activity levels among students. Best practice stories and strategies are available on the "School Nutrition Environment and Wellness Resources" Web site at *http://healthymeals-u.nal.usda.gov/local-wellness-policy-resources/samples-stories-and-guidance/success-storiesbest-practices.*

LEAs can use the Model Local School Wellness Policy to help create their local school wellness policy and meet the minimum Federal requirements for local school wellness policy implementation. This model local school wellness policy template was developed by the Alliance for a Healthier Generation, has been thoroughly reviewed by the FNS, and is in compliance with the statutory requirements for local school wellness policies, as well as this final regulation. This model wellness policy will be revised by the Alliance for a Healthier Generation to be consistent with this final regulation and reviewed by FNS to confirm compliance. Once completed, it will be made available, along with other sample wellness policies, on the "School Nutrition Environment and Wellness Resources" Web site at *http://healthymeals.nal.usda.gov/local-wellness-policy-resources/model-wellness-policies.*

FNS will continue to identify, develop, and post resources to the Team Nutrition and "School Nutrition Environment and Wellness Resources" Web sites including guidance materials, Frequently Asked Questions, sample and model local school wellness policies that will help LEAs assess the extent to which the local school wellness policy compares to model local school wellness policies, as required under the triennial assessment. In addition, best practices and other technical assistance will be provided by FNS as needed to develop, implement, assess, and report on local school wellness policies that promote healthy school nutrition environments.

Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been designated a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Impact Analysis Summary

As required for all rules that have been designated significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this proposal. A summary is presented below. The complete RIA is included in the docket for this rule at *www.regulations.gov.*

Need for Action

The final rule updates the regulations governing the administration of USDA's Child Nutrition Programs in response to statutory changes made by The Healthy, Hunger-Free Kids Act of 2010.[7] Section 204 of the Healthy, Hunger-Free Kids Act of 2010 added section 9A to the Richard B. Russell National School Lunch Act. This new section requires local educational agencies (LEAs) to establish local wellness policies and expands the scope of existing wellness policies; brings additional stakeholders into the development, implementation, and review of local school wellness policies; and requires public updates on the content and implementation of the wellness policies.

Benefits

The 2004 legislation placed the responsibility for developing a local school wellness policy at the local level, so the unique needs of each school under the jurisdiction of the LEA could be addressed. Each LEA was required to establish a local school wellness policy that set goals for nutrition education, physical activity, and other school-based activities designed to promote student wellness, and to include nutrition guidelines for all foods available on the school campus during the school day. The legislation tasked the Secretary with developing regulations providing the framework and guidelines for LEA's local school wellness policies, including minimum goals, nutrition guidelines, and requirements.

The final rule expands the scope of existing wellness policies, bringing additional stakeholders into the development, implementation, and review of local school wellness policies, and it also requires public updates on the content and implementation of the wellness policies. Specifically, it provides guidelines for local educational agencies and the Department regarding their roles in these policies, as required by the Healthy, Hunger-Free Kids Act of 2010.

As documented in the Bridging the Gap study,[8] there is substantial variability in local wellness policies, in the strength of those policies, and in policy enforcement, meaning that not all school children are benefitting from the policies in their schools.

The final rule strengthens the requirements for the local wellness policies. Under the final rule, LEAs and schools are encouraged to identify specific, measurable objectives with attention to both long- and short-term goals. The wellness committee responsibilities have also been expanded to include oversight on policy implementation. LEAs must now designate at least one LEA official to be responsible for periodically determining the extent to which schools are in compliance with their wellness policies and the extent to which the policy compares with model policy.

The final rule also includes a provision requiring that LEA local school wellness policies include standards that limit in-school marketing to only those foods and beverages that meet the standards in the Smart Snacks in Schools final rule. The new marketing requirement for local school wellness policies will mean that children are presented with images and signs that promote healthier foods and beverages and that the products that are marketed will match the snack foods and beverages that will be available in schools.

Under the final rule, schools must also inform and update the public about the content of their policies and the status of policy implementation. LEAs must also formally assess their policies to ensure that goals and objectives are being met. With greater transparency on the effectiveness of these policies, parents and other community stakeholders will be better informed and positioned to improve the school nutrition and wellness environment.

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[7] Public Law 111–296.

[8] Chriqui JF, Resnick EA, Schneider L, Schermbeck R, Adcock T, Carrion V, Chaloupka FJ. *School District Wellness Policies: Evaluating Progress and Potential for Improving Children's Health Five Years after the Federal Mandate. School Years 2006–07 through 2010–11.* Volume 3. Chicago, IL: Bridging the Gap Program, Health Policy Center, Institute for Health Research and Policy, University of Illinois at Chicago, 2013, *www.bridgingthegapresearch.org.* The Bridging the Gap study examined hard copies of written wellness policies from nationally representative samples of between 579 and 679 public school districts for each school year from SY 2006–2007 through SY2010–2011. Response rates in all years exceeded 90 percent. See p. 45 of the Bridging the Gap study for additional methodological information.

As cited in Bridging the Gap, increasing numbers of peer-reviewed studies demonstrate the correlation between healthy nutrition and physical activity on the one hand and improved academic performance and improved classroom behavior on the other.[9] A recent Institute of Medicine report found that "increasing physical activity and physical fitness may improve academic performance and that time in the school day dedicated to recess, physical education class, and physical activity in the classroom may also facilitate academic performance. . . . Available evidence suggests that mathematics and reading are the academic topics that are most influenced by physical activity. These topics depend on efficient and effective executive function, which has been linked to physical activity and physical fitness." [10] Similar correlations between better fitness and better academic performance have been found in Texas among students in grades 3–12, among Massachusetts middle school students, and among Illinois 3rd and 5th graders.[11]

A literature review of 33 peer-reviewed papers (including six studies using large, nationally representative studies) finds increasing evidence supporting the idea that schools' policies on foods, beverages, and physical activity are correlated with calories consumed and expended by school age children, and even to children's body mass indexes.[12] Consequently, we believe that strengthening local wellness policies will have real positive effects on the health outcomes for students, though these benefits cannot be quantified nationally with precision using existing data given the lack of baseline or ongoing data about student health status.

Finally, the rule requires LEAs to give increased attention to their implementation of the new school meal pattern requirements and the Smart Snacks in Schools requirements. As described in the regulatory impact analysis published with the school meals rule,[13] the benefits of the new school meal pattern requirements include improved nutrition and diets to students and likely improved health outcomes. Furthermore, as described in the regulatory impact analysis published with the Smart Snacks in Schools rule, the benefits of the Smart Snacks in Schools rule likely include decreased consumption of solid fats and added sugars and decreased obesity rates.

Costs/Administrative Impact

There are no transfers as a result of this rule, and we estimate that there is no quantifiable economic impact beyond the new administrative, recordkeeping, and reporting requirements for LEAs established as a result of this rule. LEAs will face increased administrative, recordkeeping, and reporting burdens in order to conduct triennial assessments of wellness policies and policy implementation and retain documentation of these assessments. We estimate these costs to be approximately $4 million per year across the entire United States and note that they are attributable to statutory requirements, rather than discretionary regulatory requirements. A summary table of the estimated costs of the final rule is provided below.

RECORD AND REPORTING REQUIREMENT COSTS FOR LOCAL SCHOOL WELLNESS POLICIES

Administrative burden on LEAs	Fiscal year (millions)					
	2016	2017	2018	2019	2020	Total
Additional Reporting Burden on LEAs						
LEA must establish and/or update local wellness policies for all schools participating in NSLP	$2.6	$2.6	$2.7	$2.8	$2.9	$13.6
LEA must inform the public annually about the content and implementation of the local school wellness policy and any updates	0.5	0.5	0.5	0.6	0.6	2.7
LEA must conduct triennial assessments of schools' compliance with the local school wellness policy and inform public about progress	0.9	0.9	0.9	0.9	1.0	4.5
Total Estimated Reporting Burden	3.9	4.0	4.2	4.3	4.4	20.9
Additional Recordkeeping Burden on LEAs						
SFA/LEA must retain records to document compliance with the local school wellness policy requirements	0.1	0.1	0.1	0.1	0.1	0.7

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[9] Chriqui et al., 2013, p. 4.

[10] Committee on Physical Activity and Physical Education in the School Environment, Food and Nutrition Board, Institute of Medicine, *Educating the Student Body: Taking Physical Activity and Physical Education to School,* edited by Kohl and Cook HD (Washington, DC: National Academies Press, 2013), available online at *http://www.ncbi.nlm.nih.gov/books/NBK201501/.*

[11] Troust, SG, Active Living Research, "Active education: physical education, physical activity, and academic performance." Available online at *http://activelivingresearch.org/files/ALR_Brief_ActiveEducation_Summer2009.pdf.*

[12] Chriqui et al., 2013, p. 4. Chriqui FJ, Healthy Eating Research, Bridging the Gap, "Influence of competitive food and beverage policies on children's diets and childhood obesity," p. 6. Available online at *http://healthyeatingresearch.org/wp-content/uploads/2013/12/Competitive_Foods_Research_Review_HER_BTG_7-2012.pdf.*

[13] **Federal Register**, Vol. 77, No. 17, pp. 4088–4167.

RECORD AND REPORTING REQUIREMENT COSTS FOR LOCAL SCHOOL WELLNESS POLICIES—Continued

Administrative burden on LEAs	Fiscal year (millions)					
	2016	2017	2018	2019	2020	Total
Total Additional Administrative Burden on LEAs	4.1	4.2	4.3	4.4	4.6	21.6

*The BLS, FY2014 employer cost for State and local government public administration employee wage rate is used in this estimate and inflated on a fiscal year basis by State and Local Price Index used in PB2016.

Regulatory Flexibility Act Summary

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612). It has been certified that this rule will have a significant impact on a substantial number of small entities. A summary is presented below. The complete RFA is included in the docket for this rule at *www.regulations.gov.*

The requirements established by this final rule will apply to LEAs which meet the definitions of "small governmental jurisdiction" and "small entity" in the Regulatory Flexibility Act. The regulatory flexibility analysis considers the impact of the final rule on small businesses. The final rule has the potential to affect approximately 20,000 local educational agencies and some 105,000 schools operating in the U.S. We estimate that the administrative cost for schools will be on average about $41 per school per year. The marketing limitations in the final rule could affect vending machine operators and marketing companies as they change existing marketing to meet the requirements. Because of the changes in products available in schools due to the Smart Snacks in Schools interim rule, we believe that much of that change will already have occurred, but there may still be some labor costs associated with changing the marketing campaigns. It is expected that marketing in schools will not decrease; it will be updated to promote healthier foods and beverages.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for 2016 inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable)* in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

A school district and six individuals submitted comments asserting that the proposed rule represents an unfunded mandate. One individual commenter noted that this additional duty should not be placed on child nutrition directors without additional funding. The school district stated that FNS is estimating implementation costs to be quite low so that the Unfunded Mandates Reform Act does not apply. The other individual commenters made general statements that this rule results in an unfunded mandate.

The provisions in this regulation are statutory requirements, not discretionary. Furthermore, FNCS has provided flexibilities for LEAs. For example, the rule allows the LEA to choose the appropriate LEA or school official responsible for oversight of the local wellness policy. Schools were previously required to have local wellness policies in place, the effort required to update local wellness policies to bring them into compliance with the requirements of this rule is estimated to be less than $5 million dollars per year. This is well below the $146 million threshold that triggers the cost benefit analysis required for unfunded mandates. The cost estimates for this rule are discussed in more detail above and in the complete Regulatory Impact Analysis included in the docket for this rule at *www.regulations.gov.*

Based on these cost estimates, FNS has determined that this final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The National School Lunch Program (NSLP), School Breakfast Program (SBP), State Administrative Expenses (SAE), Special Milk Program (SMP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP) are listed in the Catalog of Federal Domestic Assistance Programs under NSLP No. 10.555, SBP No. 10.553, SAE No. 10.560, SMP No. 10.556, CACFP No. 10.558, and SFSP No. 10.559, respectively and are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials (See 2 CFR chapter IV). The Child Nutrition Programs are federally funded programs administered at the State level. The Department headquarters and regional office staff engage in ongoing formal and informal discussions with State and local officials regarding program operational issues. This structure of the Child Nutrition Programs allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other rules.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. USDA has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation, however, FNS is not aware of any specific situations in which this would occur. This rule is not intended to have retroactive effect unless specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures in § 210.18(q) or § 235.11(f) must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300–4, "Civil Rights Impact Analysis," and 1512–1, "Regulatory Decision Making Requirements." After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability nor is it intended to have a differential impact on minority owned or operated business establishments and woman-owned or operated business establishments that participate in the Child Nutrition Programs.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This rule contains information collection requirements subject to approval by OMB.

A 60-day notice was embedded into the proposed rule, "7 CFR parts 210 and 220 Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010," published in the **Federal Register** at 79 FR 10693 on February 26, 2014, which provided the public an opportunity to submit comments on the information collection burden resulting from this rule.

One commenter stated that this rule adds significant paperwork to already overworked Food Service Directors nationwide, specifically noting that the current three-year review cycle takes a month for preparation. The majority of the estimated burden for this final rule is in establishing local school wellness polices as required by the HHFKA. This is a one-time occurrence, but comprises an estimated 99,110 hours (63 percent) of the total estimated 156,923 hours. It is likely that the majority of LEAS have already established these policies; however, the burden needs to be accounted for in this final rule. Once every three years, a triennial assessment is required by the HHFKA and accounts for an estimated 33,035 hours annually (21 percent). Annually, the HHFKA required that LEAs inform the public and make any updates available to the public and this accounts 12.6 percent of the total burden. Retaining records accounts for an estimated 3 percent of the total burden. The burden associated with the Administrative Review, occurring every three years, is not part of this final rule.

Another commenter suggested that the workload burden at the LEA level would be greater than USDA's anticipated burden for larger districts. Based on comments received, FNS has removed from the final rule the proposed 210.30(e)(2) which would have required annual reporting of each school's progress in meeting policy goals. Eliminating the proposed annual reporting requirement caused a significant reduction of 83,432 responses and 83,432 burden hours for public disclosure of the proposed report. The final rule clarifies that only LEAs are required to establish local school wellness policies, not each individual school which decreased the number of responses by 83,432; however, the estimated hours per response were increased accordingly to respond to comments regarding burden hours to ensure no decrease in the burden hours for this provision.

In response to these comments, the changes between the proposed burden and the burden for the final rule resulted in an overall decrease of 63,565 hours for public disclosure and a decrease of 21,117 hours for recordkeeping.

This is a new collection. The provisions in this final rule create new burden which will be merged into a currently approved information collection titled "National School Lunch Program" (NSLP), OMB Number 0584–0006, which expires on April 30, 2016.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with this final rule, which were filed under 0584–0592, have been submitted for approval to OMB. When OMB notifies FNS of its decision, FNS will publish a notice in the **Federal Register** of the action.

FNS is requesting an estimated 151,967 hours for LEAs to publicly disclose local school wellness policies and their triennial assessment results. FNS is requesting an estimated 4,956 hours for recordkeeping requirements for LEAs. The following table reflects estimated burden associated with the new information collection requirements:

ESTIMATED ANNUAL BURDEN FOR 0584–0592, LOCAL WELLNESS POLICY IMPLEMENTATION UNDER THE HEALTHY, HUNGER—FREE KIDS ACT OF 2010

[7 CFR Parts 210 and 220]

Affected public	7 CFR reference	Estimated number of respondents	Frequency of response	Total annual responses	Estimated hours per response	Estimated annual burden hours
			Reporting			
Each LEA must update local wellness policies for all participating schools.	210.30(a), 210.30(c)(5).	19,822	1	19,822	5	99,110
LEAs must inform the public annually about the local wellness policy and make any updates available to the public.	210.30(d)(2), 220.7 ..	19,822	1	19,822	1	19,822

ESTIMATED ANNUAL BURDEN FOR 0584–0592, LOCAL WELLNESS POLICY IMPLEMENTATION UNDER THE HEALTHY, HUNGER—FREE KIDS ACT OF 2010—Continued

[7 CFR Parts 210 and 220]

Affected public	7 CFR reference	Estimated number of respondents	Frequency of response	Total annual responses	Estimated hours per response	Estimated annual burden hours
LEAs are required to conduct triennial assessments and make assessment results and any updates available to public.	210.30(d)(3), (e)(2), (e)(3).	6,607	1	6,607	5	33,035
Total Estimated Reporting Burden.	....	19,822	2.3333	46,251	3.2857	151,967
		Recordkeeping				
LEAs must retain records to document compliance with local school wellness policy requirements.	210.15(b)(9), 210.30(f).	19,822	1	19,822	0.25	4,955.5
Total Estimated Recordkeeping Burden.	....	19,822	1	19,822	0.25	4,955.5
		Total of Reporting and Recordkeeping				
Reporting	....	19,822	2.3333	46,251	3.2857	151,967
Recordkeeping	....	19,822	1	19,822	0.25	4,955.5
Total	....	19,822	3.3333	66,073	2.375	156,923

SUMMARY OF BURDEN (OMB #0584–0592)

TOTAL NO. RESPONDENTS	19,822
AVERAGE NO. RESPONSES PER RESPONDENT	3.3333
TOTAL ANNUAL RESPONSES	19,822
AVERAGE HOURS PER RESPONSE	2.375
TOTAL NEW BURDEN REQUESTED WITH NEW RULE	*156,923

* Upon approval by OMB these 156,923 hours will be merged with OMB #0584–0006.

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes. This rule promotes use of Internet for posting policy content and making implementation and updates transparent to public.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Food and Nutrition Service has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, the Food and Nutrition Service will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

List of Subjects

7 CFR Part 210

Grant programs—education; Grant programs—health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs; Surplus agricultural commodities.

7 CFR Part 220

Grant programs—education; Grant programs—health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs.

Accordingly, for the reasons set forth in the preamble, 7 CFR parts 210 and 220 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH ACT

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.12, revise the section heading and add paragraph (e) to read as follows:

§ 210.12 Student, parent, and community involvement.

* * * * *

(e) *Local school wellness policies.* Local educational agencies must comply with the provisions of § 210.30(d) regarding student, parent, and community involvement in the development, implementation, and periodic review and update of the local school wellness policy.

■ 3. In § 210.15, add paragraph (b)(9) to read as follows:

§ 210.15 Reporting and recordkeeping.

* * * * *

(b) * * *

(9) Records to document compliance with the local school wellness policy requirements as set forth in § 210.30(f).

■ 4. In § 210.18, add paragraph (h)(8) to read as follows:

§ 210.18 Administrative reviews.

* * * * *

(h) * * *

(8) *Local school wellness.* The State agency must ensure the local educational agency complies with the local school wellness requirements set forth in § 210.30.

* * * * *

§ 210.30, 210.31, and 210.32 [Redesignated as §§ 210.31, 210.32, and 210.33]

■ 5. Redesignate §§ 210.30, 210.31, and 210.32 as §§ 210.31, 210.32, and 210.33 respectively.

■ 6. Add a new § 210.30 to read as follows:

§ 210.30 Local school wellness policy.

(a) *General.* Each local educational agency must establish a local school wellness policy for all schools participating in the National School Lunch Program and/or School Breakfast Program under the jurisdiction of the local educational agency. The local school wellness policy is a written plan that includes methods to promote student wellness, prevent and reduce childhood obesity, and provide assurance that school meals and other food and beverages sold and otherwise made available on the school campus during the school day are consistent with applicable minimum Federal standards.

(b) *Definitions.* For the purposes of this section:

(1) *School campus* means the term as defined in § 210.11(a)(4).

(2) *School day* means the term as defined in § 210.11(a)(5).

(c) *Content of the plan.* At a minimum, local school wellness policies must contain:

(1) Specific goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness. In developing these goals, local educational agencies must review and consider evidence-based strategies and techniques;

(2) Standards for all foods and beverages provided, but not sold, to students during the school day on each participating school campus under the jurisdiction of the local educational agency;

(3) Standards and nutrition guidelines for all foods and beverages sold to students during the school day on each participating school campus under the jurisdiction of the local educational agency that;

(i) Are consistent with applicable requirements set forth under §§ 210.10 and 220.8 of this chapter;

(ii) Are consistent with the nutrition standards set forth under § 210.11;

(iii) Permit marketing on the school campus during the school day of only those foods and beverages that meet the nutrition standards under § 210.11; and

(iv) Promote student health and reduce childhood obesity.

(4) Identification of the position of the LEA or school official(s) or school official(s) responsible for the implementation and oversight of the local school wellness policy to ensure each school's compliance with the policy;

(5) A description of the manner in which parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the general public are provided an opportunity to participate in the development, implementation, and periodic review and update of the local school wellness policy; and

(6) A description of the plan for measuring the implementation of the local school wellness policy, and for reporting local school wellness policy content and implementation issues to the public, as required in paragraphs (d) and (e) of this section.

(d) *Public involvement and public notification.* Each local educational agency must:

(1) Permit parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the general public to participate in the development, implementation, and periodic review and update of the local school wellness policy;

(2) Inform the public about the content and implementation of the local school wellness policy, and make the policy and any updates to the policy available to the public on an annual basis;

(3) Inform the public about progress toward meeting the goals of the local school wellness policy and compliance with the local school wellness policy by making the triennial assessment, as required in paragraph (e)(2) of this section, available to the public in an accessible and easily understood manner.

(e) *Implementation assessments and updates.* Each local educational agency must:

(1) Designate one or more local educational agency officials or school officials to ensure that each participating school complies with the local school wellness policy;

(2) At least once every three years, assess schools' compliance with the local school wellness policy, and make assessment results available to the public. The assessment must measure the implementation of the local school wellness policy, and include:

(i) The extent to which schools under the jurisdiction of the local educational agency are in compliance with the local school wellness policy;

(ii) The extent to which the local educational agency's local school wellness policy compares to model local school wellness policies; and

(iii) A description of the progress made in attaining the goals of the local school wellness policy.

(3) Make appropriate updates or modifications to the local school wellness policy, based on the triennial assessment.

(f) *Recordkeeping requirement.* Each local educational agency must retain records to document compliance with the requirements of this section. These records include but are not limited to:

(1) The written local school wellness policy;

(2) Documentation demonstrating compliance with community involvement requirements, including requirements to make the local school wellness policy and triennial assessments available to the public as required in paragraph (e) of this section; and

(3) Documentation of the triennial assessment of the local school wellness policy for each school under its jurisdiction.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 7. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 8. In § 220.7, add paragraph (h) to read as follows:

§ 220.7 Requirements for participation.

* * * * *

(h) Local educational agencies must comply with the provisions of § 210.30 of this chapter regarding the development, implementation, periodic review and update, and public notification of the local school wellness policy.

Dated: June 21, 2016.

Kevin W. Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2016–17230 Filed 7–28–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220 and 235

[FNS 2014–0011]

RIN 0584–AE30

Administrative Reviews in the School Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: As required by the Healthy, Hunger-Free Kids Act of 2010, this final rule revises the State agency's administrative review process in the National School Lunch Program and School Breakfast Program to establish a unified accountability system designed to ensure that school food authorities offering school meals comply with program requirements. The updated administrative review process includes new procedures, retains key existing requirements from the Coordinated Review Effort and the School Meals Initiative, provides new review flexibilities and efficiencies for State agencies, and simplifies fiscal action procedures. In addition to establishing a unified administrative review process, this rule requires State Agencies public disclosure of a summary of the administrative review results. These changes are expected to strengthen program integrity through a more robust, effective, and transparent process for monitoring school nutrition program operations.

DATES: This rule is effective September 27, 2016.

FOR FURTHER INFORMATION CONTACT: Sarah Smith-Holmes, Child Nutrition Monitoring and Operations Support Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone: (703) 605–3223.

SUPPLEMENTARY INFORMATION:

I. Background

Federally supported school nutrition programs are operated in 56 State Agencies (SAs) with more than 100,000 schools and Residential Child Care Institutions participating. Ensuring that the programs are carried out in the manner prescribed in statute and regulation is a key administrative responsibility at every level. Federal, State, and local program staff share in the responsibility to ensure that all aspects of the programs are conducted with integrity and that taxpayer dollars are being used as intended.

Improving program integrity and reducing improper payments has been a long-standing priority for the Department of Agriculture (USDA). Periodic program evaluations, including the Access, Participation, Eligibility and Certification (APEC) studies, show that improper payments result from errors made in the processes used to determine eligibility for free or reduced price meals, as well as from errors made during daily program operations and meal service. USDA and its SA partners have devoted significant time and effort in making system improvements and process reforms over the last several years, which are expected to improve integrity and deliver long-term reductions in error rates. These efforts include on-going technical assistance and implementation of reforms made by Public Law 111–296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). Along with provisions aimed at improving program access and delivering healthier school meals, HHFKA reforms support program integrity through strengthening the use of direct certification, providing for community eligibility, establishing professional standards for school nutrition directors and staff, targeting a second review of applications in districts with high rates of application processing errors, and other provisions. USDA has already implemented the majority of these provisions through separate rulemaking. USDA has also established a new Office of Program Integrity for Child Nutrition Programs within the Food and Nutrition Service.

SAs that administer the school meal programs play a primary role in ensuring school food authorities (SFAs) are properly operating the programs. In addition to providing training and technical assistance, SAs are responsible for regularly monitoring SFA operations.

Nearly 25 years ago, in 1991 and 1992, USDA established regulations in 7 CFR 210.18 for an administrative review process to ensure SFAs complied with National School Lunch Program (NSLP) requirements. The process, known as Coordinated Review Effort (CRE), required SAs to conduct on-site administrative reviews of SFAs once every five years, and covered critical and general areas of review. The CRE review focused primarily on benefit eligibility, meal counting and claiming procedures, meal pattern and other general areas of compliance.

In 1995, SAs began to evaluate the nutritional quality of school meals under USDA's School Meals Initiative (SMI). A key component of the SMI review was the SA's nutrient analysis of the weekly school meals to determine compliance with Recommended Dietary Allowances for protein, calcium, iron and vitamins A and C; recommended minimum calorie levels; and the Dietary Guidelines for Americans.

More recently, section 207 of the HHFKA amended section 22 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1769c, to make five changes to the administrative review requirements. The first three were implemented through the final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088), which was issued January 26, 2012. Those changes involved: (1) including both NSLP and School Breakfast Program (SBP) in the administrative review; (2) confirming that the weekly meals offered meet meal patterns and dietary specifications, which made the SMI obsolete; and (3) implementing a new 3-year review cycle, as opposed to the former 5-year cycle. This rule does not make changes to these three previously promulgated provisions, but instead updates the administrative review procedures to reflect these changes.

This final rule implements the remaining two statutory provisions from section 207 of HHFKA, requiring that:

1. The administrative review process be a unified accountability system in which schools in each local education agency (LEA) are selected for review based on criteria established by the Secretary; and
2. When any SFA is reviewed under this section, ensure that the final results of the review by the SA are posted and otherwise made available to the public on request in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary.

This final rule largely reflects the updated administrative review process developed by the School Meals Administrative Review Reinvention Team (SMARRT), a 26-member team consisting of staff from Food and Nutrition Service (FNS) Headquarters, the seven Regional Offices, and SA staff from Kansas, Michigan, New York, North Carolina, Oregon, Pennsylvania and Texas (representing each of the FNS Regions). FNS assembled the team to carry out HHFKA's mandate for a unified accountability system. The group worked together for one year to develop a simplified, unified monitoring process that includes new, flexible procedures and combines key aspects of the CRE and SMI reviews. The team also sought to create a comprehensive monitoring process that includes all the school nutrition programs. Another priority was to simplify review procedures in response to SAs' needs.

The administrative review process to be codified in 7 CFR 210.18:

- Promotes overall integrity in the school nutrition programs by incorporating key requirements of the CRE and SMI reviews.
- Enables the SA to monitor essential requirements of Afterschool Snacks and Seamless Summer Option (SSO), the Special Milk Program (SMP), and the Fresh Fruit and Vegetable Program (FFVP) while conducting the administrative review.
- Includes recommended off-site monitoring approaches to offer SAs the ability to conduct reviews more efficiently by involving or consulting with off-site SA staff that have the skills needed to address specific monitoring areas.
- Includes risk-based approaches to enable the SA to target error-prone areas and focus its monitoring resources on SFAs and schools needing the most compliance assistance.
- Adds Resource Management to the general areas of review to better assess the financial condition of the nonprofit food service.
- Promotes consistency in the review process across all SAs.
- Includes updated, user-friendly forms; new risk assessment tools; and statistical sampling for increased SA efficiency. The forms and tools associated with the updated administrative review process will be addressed separately in a 60-day notice to be published in the **Federal Register** to align with the implementing administrative review rule.

The main focus of the updated administrative review under 7 CFR 210.18, continues to be the NSLP and SBP; however, the SA will perform review procedures in an updated and more flexible manner. In an effort to create a unified accountability system, the SA will also be required to monitor the NSLP Afterschool Snacks and SSO, the FFVP, and the SMP in a manner that is consistent with the review process established in 7 CFR 210.18, as applicable. Detailed procedures for the administrative review process for the NSLP, SBP and other school meals programs are provided in the updated FNS *Administrative Review Manual,* which is a guidance document available at an online portal for SAs.

Most of the regulatory changes needed to update the administrative review process are found in 7 CFR 210.18. However, this rule makes changes throughout 7 CFR parts 210, 215 and 220 to achieve a unified accountability system for the school nutrition programs. A comparison chart at the end of the preamble summarizes the major changes in these parts.

In addition, the rule removes the definition of "large school food authority" from 7 CFR 210.18, where it is no longer needed, and adds it to 7 CFR 235.2, where it continues to apply.

This rule also makes several changes to the SFA regulatory requirements to complement the administrative review process. First, the SFA's existing responsibilities in 7 CFR 210.14, are clarified with regard to indirect costs as they are to be specifically monitored by the SA under the updated administrative review process. Second, the SFA annual on-site monitoring of schools, required in 7 CFR 210.8, is strengthened by incorporating readily observable general areas of review, and by extending SFA on-site monitoring to the SBP. These changes are addressed in more detail later in the preamble.

This rule also makes a number of miscellaneous edits to remove obsolete provisions in 7 CFR 210, and to update wording to reflect the diversity of certification mechanisms used in school meal programs beyond the traditional collection of household applications. In addition, this rule updates the designation of a form in 7 CFR 210.5(d)(3), 7 CFR 210.20(a)(2), and 7 CFR 220.13(b)(2) by changing the references to the SF- 269, final Financial Status Report, to FNS–777, as approved by the Office of Management and Budget.

While this rulemaking action was underway, FNS allowed the following temporary review options for SAs:

1. Seek a waiver of the existing regulatory review procedures pursuant to section 12(l) of the NSLA, 42 U.S.C. 1760(l), and conduct reviews in accordance with the proposed administrative review process and the corresponding *Administrative Review Manual;* or
2. Continue with the existing review procedures under 7 CFR 210.18, and the corresponding *Coordinated Review Effort Procedures Manual,* with the understanding that upon publication of a final rule, the SA would be required to implement the updated administrative review process.

FNS provided the above flexibilities to SAs beginning in School Year 2013–2014. Almost all SAs requested the waiver and adopted the update administrative review process codified by this rule. This process, conducted on a shorter, 3-year cycle, has begun to generate a large volume of high value information that will strengthen FNS and SA integrity efforts over the long term. The data collected through the new review process will enhance the ability of FNS and SAs to monitor program performance. Just as importantly, the data will be a resource that FNS can use in its efforts to develop timely and targeted, evidence-based solutions to the recurring problems that give rise to improper payments.

Editorial note: The words "school" and "site" are used interchangeably in this rule, as applicable to each program, to refer to the location where meals are served. This rule also uses the term SFA to generally refer to the governing body responsible for school food service operations. However, some of those responsibilities are fulfilled by the LEA or district, most notably the certification and benefit issuance process, indirect costs, competitive food sales, and local wellness policies. Use of the term SFA in this rule is not intended to imply the responsibilities reserved for the LEA have shifted to the SFA.

II. Summary of Public Comments

The proposed rule was published in the **Federal Register** on May 11, 2015 (80 FR 26846) seeking to revise the SA's administrative review process to establish a unified accountability system designed to ensure that SFAs comply with the NSLP and SBP requirements. The rule was posted for comment on *www.regulations.gov* and the public had the opportunity to submit comments on the proposal during a 60-day period that ended July 10, 2015.

FNS appreciates the valuable comments provided by stakeholders and the public. We received 48 public comments that addressed some aspects of administrative review. Although not all commenters identified their group affiliation or commenter category, most comments were submitted by:

- State agencies—30 comments
- Advocates and Associations—3 comments
- School Food Authorities/Schools—1 comment

To view all public comments on the proposed rule, go to *www.regulations.gov* and search for public submissions under docket number FNS–2014–0011.

By a large margin, the commenters supported the intent of the proposed rule. Two comments from individuals who did not identify with a SA or other organization supported the rule with no changes proposed. All of the comments from SAs, SFAs/schools, advocates and associations, and all but three of the remaining comments from individuals who did not identify an affiliation supported the intent of the rule, but not as currently written. The comments suggested ways to revise the rule. Several SA comments utilized a form letter.

While there were no comments in opposition to the rule, three individual comments expressed negative views regarding the NSLP that are unrelated to the proposal. One of these comments focused on students' acceptance of the meal patterns, the second focused on students' non-acceptance of the meal patterns and a belief that all children should receive free meals, and the third addressed the need to increase awareness of what is required for a reimbursable meal.

Many comments expressed support for FNS' efforts to facilitate program monitoring and enhance integrity, and suggested changes that FNS can easily make consistent with the intent of the rule. Some comments seemed to result from a misunderstanding of what was written in the provisions and these areas will be addressed by making clarifications in the preamble or by editing the regulatory text to improve clarity for the readers.

The following is a summary of the public comments by key topic area:

3-Year Administrative Review Cycle

Proposed Rule: The 3-year review cycle was not included in the proposed rule to update the administrative review process.

Public Comments: Twenty-eight commenters addressed the 3-year administrative review requirement. Commenters expressed concern about the existing 3-year administrative review cycle and suggested returning to the previous 5-year review cycle. Some commenters who support returning to a 5-year review cycle nevertheless suggested that those SFAs with critical area violations or evidence of unallowable use of funds should be required to undergo a review every three years for two cycles, or more frequently depending upon the serious nature of review findings.

FNS Response: The 3-year administrative review cycle will more strongly ensure program integrity, compliance with program rules, and that SFAs receive the technical assistance they need. The 3-year review cycle was implemented through the final rule *Nutrition Standards in the National School Lunch and School Breakfast Programs* (77 FR 4088), which was issued January 26, 2012. This rule does not propose changes to these previously promulgated provisions, but instead updates the language to reflect the 3-year administrative review cycle, which became effective in School Year 2013–2014. We have conducted nationwide training for SAs and continue to provide intensive technical assistance to support our State partners. In addition, many SAs have been able to utilize the available State Administrative Expense and HHFKA section 201 funds to facilitate more frequent monitoring. SAs that face exceptional challenges are able to submit, until June 30, 2016, a request for a one-time waiver of the 3-year administrative review cycle to extend no later than June 30, 2018.

Accordingly, this final rule does not include changes to the 3-year review cycle that is already established in 7 CFR 210.18(c).

Transparency Requirement

Proposed Rule: The SA must post a summary of the most recent administrative review results for each SFA on the SA's public Web site. The review summary must cover eligibility and certification review results, an SFA's compliance with the meal patterns and the nutritional quality of school meals, the results of the review of the school nutrition environment (including food safety, local school wellness policy, and competitive foods), compliance related to civil rights, and general program participation and must be available in a format prescribed by FNS not later than 30 days after the SA provides the final results of the review to the SFA. The SA must also make a copy of the final administrative review report available to the public upon request.

Public Comments: Twenty-seven commenters addressed the proposed transparency requirement. While several commenters did not support the public posting of administrative review results, the majority of comments on this provision supported the public posting of a summary of the administrative review results, and suggested shifting the responsibility for this requirement to the local (LEA/SFA) level, as there are public notification requirements already in place for other program elements and parents and interested public are likely to access their local school districts Web site more readily than the SA Web site. Commenters recommended ways to implement this transparency requirement, and confirmed that a sample template and format for public posting should be provided.

FNS Response: FNS recognizes the concerns about requiring SAs to make publicly available the administrative review results. At the same time, the SA is responsible for the administrative review and thus ensuring that information is made easily accessible to all members of the public. This final rule continues to require that SAs publicly post a summary of the administrative review results. In addition, the final rule allows SAs the discretion to strongly encourage that SFAs post a summary of the results for each SFA and make the report available to the public upon request. This additional SA flexibility is consistent with the statutory intent to promote transparency and public access to the administrative review results. A summary of the results, must be posted not later than 30 days after the SA provides the final results of the review to the SFA.

Accordingly, 7 CFR 210.18(m) of this final rule retains the requirement that SAs post the results but includes an option for the SA to strongly encourage an SFA to post a summary of the review results and make the administrative review report available to the public upon request.

Administrative Review Forms and Tools

Proposed Rule: The review forms and tools were not included in the proposed rule to update the administrative review process.

Public Comments: Twenty-four commenters addressed the administrative review forms and tools. Most commenters discussed perceived duplication in the administrative review forms and suggested reexamining the risk indicator tools and worksheets to make them more effective and less burdensome.

FNS Response: The forms and tools associated with the updated administrative review process will be addressed separately in a 60-day notice published in the **Federal Register** that aligns the forms and the tools with the administrative review rulemaking. The feedback provided by commenters regarding duplication in the forms, assessing the sensitivity of the risk tools associated with the process, and streamlining tools and forms for ease of use will assist FNS in developing the separate 60-day notice.

Fiscal Action

Proposed Rule: Under the proposed rule at 7 CFR 210.18(l), State agencies would continue to be required to take fiscal action for all PS–1 violations and for specific PS–2 violations. The proposed rule expands the scope of fiscal action for certification/benefit issuance PS–1 violations, revises the method to calculate fiscal action for applicable violations, and modifies the State agency's authority to limit fiscal action for specific critical area violations when corrective action is completed.

Public Comments: Twenty-three commenters addressed fiscal action in several areas of the administrative review.

Commenters expressed concern over the expansion of fiscal action to the SFA for certification and benefit issuance errors. Some suggested this expansion should not occur and that fiscal action for benefit and certification errors should remain site based. Others suggested that a threshold for fiscal action, based on the size of the SFA, be established. Other commenters questioned the use of an error factor to determine the fiscal action amount.

Commenters suggested when to apply fiscal action during the administrative review. Suggestions included: applying fiscal action for repeat violations of the general areas where there is purposeful intent to circumvent the regulations; not applying fiscal action if the violations identified have resulted because staff members are new, have misinterpreted the rules or other involuntary errors; and applying fiscal action for specific meal pattern errors.

FNS Response: The consistent application of fiscal action plays a key role in maintaining the integrity of the NSLP and SBP. The proposed rule sought to expand the scope of the certification and benefit issuance review from the reviewed sites to the SFA level. In order to provide the SAs with a more accurate picture of the SFA's practices at all of its schools and improve program integrity, the proposed rule expands the scope of the certification and benefit issuance review from the reviewed sites to the SFA level. This change is also in step with the fact that most certification and benefit issuance is reviewed at the SFA/LEA level rather than at individual schools and that, therefore, most SFAs have a centralized recordkeeping system.

Through the use of an "error factor" for extrapolating fiscal action to the SFA using a percentage based calculation, the calculation takes into account the size of an SFA. SFAs with fewer financial resources may feel a greater impact from fiscal action, but that would be based on the availability of resources rather than SFA size. SAs have the option to review a statistically valid sample of the free and reduced-price students on the point-of-service benefit issuance documents for all schools in the SFA, or they can choose to review 100 percent of the free and reduced-price students on the point-of-service benefit issuance documents for all schools in the SFA s and not use the "factor" approach. This final rule also clarifies that while there is no fiscal action required for general area violations, the SA has the ability to withhold funds for repeat or egregious violations occurring in the majority of the general areas of review.

Accordingly, this final rule at 7 CFR 210.18(l), expands the scope of fiscal action for certification/benefit issuance PS–1 violations, revises the method to calculate fiscal action for applicable violations and clarifies language regarding fiscal action in the general areas of review.

Timelines for Completing the Administrative Review

Proposed Rule: The SA must complete the administrative review during the school year in which the review was begun.

Public Comments: Nineteen commenters addressed the timelines for the administrative review process. Most commenters stressed that requiring the completion of administrative reviews in the same school year in which it was begun is difficult to achieve given the timeframes for off-site review, on-site review, and the correspondence that occurs between issuing the report, accepting corrective action plans, and implementing corrective actions.

FNS Response: FNS also recognizes the concerns expressed over the timeline for completing the administrative review. We expect that new efficiencies in the updated administrative review process will facilitate monitoring. However, to address the commenters' concerns, language will be modified to specify that, at a minimum, the on-site portion of the administrative review be completed prior to the conclusion of the school year in which the administrative review is scheduled to occur.

Accordingly, 7 CFR 210.18(c) of this final rule includes additional language to clarify the timeline for completing the administrative review.

Resource Management General Area

Proposed Rule: Off-site review activity is especially important for the Resource Management area of review which, as proposed at 7 CFR 210.18(h)(1), would require an off-site evaluation of information to determine if a comprehensive review is necessary. If risk indicators show that a comprehensive review is necessary, SAs must complete the comprehensive review using procedures specified in the *Administrative Review Manual.*

Public Comments: Eighteen commenters addressed the Resource Management portion of the administrative review. Most commenters stated that this area of the administrative review should be treated like Performance Standard 1 (PS–1) and Performance Standard 2 (PS–2) in regards to fiscal action. Others encouraged USDA to consider allowing additional flexibility regarding the off-site requirement for SAs to complete this section. Several commenters offered suggestions for improvement including expanding the areas covered under Resource Management, offering additional guidance and training, and modifying the administrative review forms and risk indicators.

FNS Response: Resource Management is considered a general area of review and as such, fiscal action is not required. However, SAs may choose to withhold funds for repeated or egregious violations that are not corrected. FNS will update the language in the *FNS Administrative Review Manual* to include that SAs may also recover general funds on behalf of the non-profit school food service account as deemed necessary. FNS disagrees with the comments seeking additional flexibility in the off-site portion of the administrative review. Requiring an off-site review of Resource Management is necessary to allow the reviewer to fully prepare for the review, including consulting SA subject matter experts with specialized knowledge of Resource Management who do not typically participate in on-site reviews. Except for the Resource Management area, SAs have the option to utilize or not utilize the off-site review approach.

At this time, FNS is not expanding the areas required for review in the Resource Management section of the administrative review. However, the language has been modified to reflect that the Resource Management section includes, but is not limited to, the areas identified in the text and that the procedures outlined in the FNS *Administrative Review Manual* should be followed. FNS is continuing to provide training and guidance related to the Resource Management portion of the administrative review. Additionally, as noted later in this section, FNS is incorporating SA feedback regarding forms and tools as they are finalized.

Accordingly, the final rule requires an off-site review component for the Resource Management area and includes additional language to clarify the areas under review in the Resource Management section at 7 CFR 210.18(h)(1).

Scope of the Administrative Review

Proposed Rule: The SA must monitor compliance with critical and general areas of the administrative review in the NSLP, SBP and other school meal programs, as applicable.

Public Comments: Six commenters addressed the scope of the administrative review. Commenters had split opinions regarding the inclusion of other school meals programs, some recommended this requirement be reevaluated.

FNS Response: The periodic review of all school meals programs is critical to ensure they are properly administered and contribute to improved access, nutrition, and integrity in the Federal child nutrition efforts. The FNS *Administrative Review Manual* provides a review methodology that focuses on key aspects of each meal program without being overly burdensome.

Accordingly, 7 CFR 210.18(f) of this final rule requires the SAs to monitor other school meals programs during the administrative review.

SFA On-site Monitoring

Proposed Rule: The SFA is required to annually monitor the operation of the NSLP and SBP at each school under its jurisdiction. As is currently done with the NSLP, this monitoring of the SBP would include the counting and claiming system used by a school and the general areas of review that are readily observable.

Public Comments: Five commenters addressed the proposed SFA's annual on-site monitoring activities. Commenters supported adding readily visible general areas of review listed under 7 CFR 210.18(h) to the SFA's on-site review under 7 CFR 210.8(a). Regarding the SFA's on-site review of the SBP at 7 CFR 220.11(d), commenters suggested that a sample, rather than 100 percent of schools operating the SBP, should be monitored by the SFA annually.

FNS Response: This final rule expands the SFA's on-site monitoring activities as proposed to 7 CFR 210.8(a). However, FNS acknowledges that monitoring every SBP site annually may be a time and resource intensive process for SFAs. Accordingly, 7 CFR 220.11(d) of this final rule includes additional language to clarify that the SFA must annually monitor the SBP at a minimum of 50 percent of the schools operating the program under its jurisdiction, with each school operating the SBP to be monitored at least once every two years. Additionally, this final rule expands the SFA's on-site monitoring activities as proposed to 7 CFR 210.8(a).

On-site Meal Observation

Proposed Rule: To assess compliance with PS–2, the SA must observe a significant number of program meals at each serving line and at the point of service for each serving line on the day of review.

Public Comments: A number of commenters asked FNS to define what is meant by "significant number" of meals in regards to on-site observation of the meal service.

FNS Response: Although this final rule does not specify the number of meals that must be observed, it requires that program meals be observed as specified in the FNS *Administrative Review Manual*. Therefore, the SA must observe program meals at the beginning, middle and end of the meal service line, as well as at the point of service. Expectations for the observation of the meal service are further described in the FNS *Administrative Review Manual*.

Accordingly, 7 CFR 210.18(g)(2)(i)(B) of this final rule retains the requirement to observe a significant number of program meals on-site.

Miscellaneous Comments

Some commenters had the impression that a number of terms in the regulatory text were being used interchangeably—including "components" for lunch and "items" for breakfast, and "lunch" and "meal(s)." The terms "component" for lunch and "items" for breakfast are not interchangeable terms. The terms are specific to the NSLP and SBP, respectively, and reflect the requirements of each meal pattern. The term "lunch" is being replaced with the term "meal(s)," where applicable, to indicate that both lunches and breakfasts must be monitored in the administrative review.

In addition, a number of comments requested the inclusion of SAs in the process for finalizing the tools and forms associated with the administrative review. FNS recognizes the valuable knowledge that SAs have gained through the voluntary implementation of the updated administrative review process. FNS has incorporated SA feedback on the process, tools, and forms annually and will continue to seek SA input.

Lastly, the regulatory citation associated with the Indirect Cost language added to 7 CFR 210.18, has been updated to reflect the implementation of 2 CFR 200.

III. Overview of the Key Changes to the Administrative Review

The updated administrative review under 7 CFR 210.18, incorporates new and key procedures from the CRE and SMI reviews. It streamlines existing review procedures, gives SAs new review flexibilities, simplifies fiscal action, and includes updated review forms and new tools. This final rule replaces the existing CRE and SMI monitoring processes, and is expected to improve program integrity by providing a single, comprehensive, effective, and efficient SA monitoring process. Specific procedures for conducting the review process are described in the FNS *Administrative Review Manual*.

The key procedures carrying forward from previous CRE and SMI reviews include timing of reviews, scheduling of SFAs, exit conference and notification, corrective action, withholding payment, SFA appeal of SA findings, and FNS review activity. These provisions are found in the amendatory language and may include minor, non-substantive technical changes in 7 CFR 210.18 that are not discussed in this preamble. The preamble focuses on new key changes, which are discussed next.

Procedures for Conducting a Review

Minimum Number of Schools

The administrative review process under 7 CFR 210.18 requires SAs to review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In addition the SA must review a minimum number of schools. The final rule clarifies that the SA must review at least one school from each LEA. To be consistent with statuary language the final rule makes clear the requirement that the SA must select schools for review in each LEA using criteria established by the Secretary.

Details regarding the minimum number of schools to be reviewed and procedures for ensuring that a school in each LEA is reviewed, can be found in the School Year 2016–2017 FNS *Administrative Review Manual*.

Accordingly, the update that the SA must review at least one school from each LEA is outlined in 7 CFR 210.18 (e)(1) of the final rule.

Off-Site and On-Site Review Activities

The administrative review process under 7 CFR 210.18, is a comprehensive on-site evaluation of SFAs participating in the school meal programs. This final rule establishes that some administrative review activities can be conducted off-site, rather than during the on-site portion of the review. Adding the off-site approach is expected to assist the SA by reducing the SA's travel time and expense, enabling SAs to conduct the documentation review and other existing review requirements over a longer period of time than would be possible while on-site. This also allows the reviewer to seek input from specialized State staff for adequate review of complex documentation (*e.g.*, financial staff).

Off-site review activity is especially important for the Resource Management area of review which, as stated at 7 CFR 210.18(h)(1), requires an off-site evaluation of information to determine if a comprehensive review is necessary. For other areas of review, the off-site review is strongly recommended but it is not required. Examples of possible off-site review activities include:

- Identifying the sites for review.
- Reviewing documentation such as the SFA agreement, policy statement, renewal application, prior review findings and corrective action plans.
- Obtaining and reviewing the benefit issuance document.
- Selecting student certifications for review.
- Examining the SFA's verification procedures.
- Reviewing the SFA's counting and claiming procedures and documentation.
- Reviewing menus, production records, and related documents.
- Reviewing the Offer versus Serve policy.
- Identifying the school most at risk for nutrition related violations and conducting a targeted menu review in that school.
- Determining the targeted menu review approach.

The on-site review activities focus on validating the information obtained during the SFA off-site review and those aspects of program operations that can best be reviewed on-site. These types of on-site review activities are discussed in more detail under the heading "Areas of Review."

Accordingly, 7 CFR 210.18(a) and 7 CFR 210.18(b) of the final rule add off-site activity to the administrative review process, and 7 CFR 210.18(h)(1) requires an off-site review for the Resource Management area of review.

Entrance and Exit Conferences

While some of the review activities can be conducted off-site, an observation of program operations while on-site at the SFA remains a critical component of program oversight. Prior to commencing on-site review activities, States are encouraged to convene an entrance conference with key SFA staff and, as applicable, LEA staff and administrators with responsibility for ensuring that program requirements are followed. This initial conversation can help clarify expectations for the on-site review, raise preliminary issues identified during off-site review activities, and identify the additional information needed to complete the on-site portion of the review. While not required, this rule provides, at 7 CFR 210.18(i)(1), the option for SAs to begin the administrative review by conducting an entrance conference with the relevant SFA staff. This provision reflects existing practice. This rule also retains the existing requirement for the SA to conduct an exit conference and codifies the requirement at 7 CFR 210.18(i)(2).

Administrative Review Materials

This rule requires, in 7 CFR 210.18(f)(1), that SAs use the forms and tools prescribed by FNS to conduct the administrative review. As stated earlier, FNS will issue the updated tools and forms to align with the implementing rule. The tools and forms include, but are not limited to: An Off-site Assessment Tool, an On-site Assessment Tool, a Meal Compliance Risk Assessment Tool, a Dietary Specifications Assessment Tool, and a Resource Management Risk Indicator Tool.

These tools and corresponding instructions are currently available to SAs on the FNS PartnerWeb, which is a restricted access online portal for SAs that administer the school meal programs. SAs can find the tools under the subject "Administrative Review" located in the Resources and Guidance document library of the CND Policy and Memoranda Community. With the exception of the Resource Management Risk Indicator Tool, which must be completed off-site, the required administrative review tools may be completed off-site or on-site.

Areas of Review

The updated administrative review process includes critical and general areas that mirror the critical and general areas specified in existing 7 CFR 210.18(g) and (h), with the modifications discussed below.

Critical Areas of Review

This final rule retains the critical areas of review that help evaluate compliance with several program requirements. The review of PS–1 focuses on certification for free and reduced price meals, benefit issuance, and meal counting and claiming. The review of PS–2 focuses on meals meeting the meal pattern and dietary specification requirements and documentation to support meeting these requirements. The final rule retains both performance standards in 7 CFR 210.18(g)(1) and (g)(2) but modifies how they are monitored, as described in the next two subsections of this preamble.

PS–1—Meal Access and Reimbursement

This final rule retains PS–1 in 7 CFR 210.18(g)(1) with only minor technical changes. Existing PS–1 refers to "All, free, reduced price and paid lunches . . . served only to children eligible for free, reduced price and paid lunches . . ." This rule replaces the term "lunches" with the term "meals" to include an assessment of both the NSLP and the SBP, and Afterschool Snacks as applicable, as required by the amendments made to the NSLA by section 207 of the HHFKA.

In addition, this rule retains the three-pronged scope of review in PS–1. The SA must:

- Determine the number of children eligible for free, reduced price and paid meals, by type, in the reviewed schools (hereafter termed "Certification").
- Evaluate the system for issuing benefits and updating eligible status by validating the mechanisms the reviewed school uses to provide benefits to eligible children (hereafter termed "Benefit Issuance").
- Determine whether the meal counting system yields correct claims (hereafter termed "Meal Counting and Claiming").

Although the above processes remain in place, this rule streamlines and consolidates the Certification and Benefit Issuance review processes to improve program integrity and simplify monitoring. As provided in 7 CFR 210.18(g)(1)(i) of this final rule, the SA must:

- Obtain the free and reduced price benefit issuance document for each school under the jurisdiction of the SFA for the day of review or a day in the review period.
- Review all, or a statistically valid sample of, free and reduced price certification documentation (*i.e.*, direct certifications, household applications) and other documentation related to eligibility status (*e.g.*, verification, transfers).
- Validate that reviewed students' free and reduced price eligibility status was correctly determined and properly

transferred to the benefit issuance document.

In addition, the final rule expands the scope of Certification and Benefit Issuance review from the reviewed sites to the SFA level in order to provide the SA with a more accurate picture of the SFA's practices at all schools. This rule requires the SA to review the free and reduced price certification and benefit issuance documentation for students across the entire SFA. This change reflects that most SFAs have a centralized recordkeeping system; generally, certifications are made and benefit issuance is maintained at the SFA level. This approach allows certification and benefit issuance errors identified during a review to be corrected at the SFA level.

Under 7 CFR 210.18(g)(1)(i) of this final rule, SAs will continue to have the option of reviewing either all certifications on the benefit issuance documents, or a statistically valid sample of certifications. SAs using a statistically valid sample review fewer student documents and the review yields results representative of the certification and benefit issuance activity in the SFA. The statistically valid sample size may be determined manually, or by using the Statistical Sample Generator developed by FNS or other statistical sampling software. Both options are described in the FNS *Administrative Review Manual.* This final rule retains the statistical sampling confidence level of 95 percent for electronic certification and benefit issuance systems. For manual benefit issuance systems, this rule increases the sampling confidence level to 99 percent.

The Meal Counting and Claiming portion of the review continues to ensure that all free, reduced price and paid meals are accurately counted, recorded, consolidated and reported through a system that consistently yields correct claims. Under 7 CFR 210.18(g)(1)(ii) of the final rule, the SA continues to monitor counting and claiming at both the SFA and reviewed school levels. The review strategies remain unchanged; therefore, the SA must determine whether:

- Daily meal counts, by type, for the review period are more than the product of the number of children determined to be eligible, by type for the review period, adjusted for attendance at the reviewed schools;
- Each type of food service line provides accurate point of service meal counts, by type, and those meal counts are correctly counted and recorded at the reviewed schools; and
- All meals at the reviewed schools are correctly counted, recorded, consolidated and reported for the day they are served.

In addition, SAs must determine whether meal counts submitted by each school are correctly consolidated, recorded, and reported by the SFA on the Claim for Reimbursement.

Accordingly, the final rule combines the certification and benefit issuance process, expands the scope of the certification and benefits issuance review to the SFA level, and establishes acceptable sample sizes and confidence levels for statistical sampling at 7 CFR 210.18(g)(1)(i). The rule retains existing meal counting and claiming review procedures at 7 CFR 210.18(g)(1)(ii).

PS–2—Meal Pattern and Nutritional Quality

Section 210.18(g)(2)(i) of this final rule requires the SA to monitor an SFA's compliance with the meal patterns at each reviewed school, and 7 CFR210.18(g)(2)(ii) requires the SA to assess compliance with the dietary specifications using a risk-assessment approach. Although the final rule largely retains the existing scope of the PS–2 review, it makes the following changes:

- Requires the completion a USDA-approved menu tool for each school selected for review to establish the SFA's compliance with the required food components and quantities for each age/grade group being served. The menu tool can be completed off-site (preferably) or on-site using production records, menus, recipes, food receipts, and any other documentation that shows the meals offered during a week from the review period contained the required components/quantities.
- Requires the SAs to review menu and production records for a minimum of three to a maximum of seven operating days to determine whether all food components and quantities have been offered over the course of a typical school week.
- Requires the SAs to confirm, through on-site observation of reviewed schools, that students select at least three food components at lunch and at least three food items at breakfast when Offer versus Serve is in place, and that these meals include at least ½ cup of fruits or vegetables.
- Requires the SAs to assess compliance with the dietary specifications (calories, sodium, saturated fat, and trans fat) using a risk-based approach, and only requires a weighted nutrient analysis for a school determined to be at high risk for violations (see discussion under the heading *Dietary Assessment*).

Other PS–2 review procedures remain the same. For example, for the day of review, the SA must observe the serving line(s) to determine whether all required food components/items and food quantities are offered, and observe a significant number of program meals, as described in the FNS *Administrative Review Manual,* counted at the point of service for each type of serving line to determine whether the meals selected by the students contain the required food components and quantities. The SA must also assess whether performance-based cash assistance should continue to be provided for lunches served.

Dietary Assessment

This final rule, at 7 CFR 210.10 and 7 CFR 220.8, continues to require the SAs to assess whether the meals offered to children are consistent with the calories, sodium, saturated fat, and trans fat restrictions. Unlike the existing requirements, the final rule requires that the SA follow a risk-based approach to identify the reviewed school most at risk of nutrition-related violations and conduct a targeted menu review of only that school. This differs from the previous requirement that SAs conduct a weighted nutrient analysis of the meals offered in all reviewed schools to determine whether those meals meet the calorie, sodium, and saturated fat requirements.

The final rule requires the SA to complete the Meal Compliance Risk Assessment Tool off-site or on-site for each school selected for review to identify the school most at risk for nutrition-related violations. This risk-based approach is intended to lessen the review burden on SAs and allow them to better target their resources. For the one school determined to be most at risk, the SA conducts an in-depth, targeted menu review using one of four FNS approved options. These options are: Conduct a nutrient analysis, validate an existing nutrient analysis performed by the SFA or a contractor, complete the Dietary Specifications Assessment Tool to further examine the food service practices, or follow an alternative FNS-approved process utilizing the Menu Planning Tools for Certification for Six Cent Reimbursement.

Accordingly, the updated review procedures to assess the food components and quantities are established in 7 CFR 210.18(g)(2)(i), and the procedures to assess the dietary specifications are established in 7 CFR210.18(g)(2)(ii) of the final rule.

Performance-Based Cash Assistance

This provision is addressed in 7 CFR 210.18(g)(2)(iii) of the final rule. The SA must assess whether performance-based cash assistance should continue to be provided for the lunches served.

Follow-Up Reviews

This final rule lessens the burden associated with the administrative review by removing the requirement for follow-up reviews triggered by a specific threshold. The follow-up review requirement was implemented at a time when a 5-year review cycle was in place and there was concern about the long span between reviews. Because the 3-year review cycle now allows the SA to have more frequent contact with the SFAs, the follow up requirement is unnecessary. Instead, the final review process emphasizes collaborative compliance. When errors are detected, the SA will require corrective action, provide technical assistance to bring the SFA into compliance, and take fiscal action when appropriate. The SA has discretion to do a follow-up review based on its own criteria.

Accordingly, this final rule removes the definitions of "follow-up reviews" and "review threshold" in existing 7 CFR 210.18(b) and removes the follow-up review procedures in 7 CFR 210.18(i). Minor references to follow-up review and review threshold throughout 7 CFR part 210 are also removed. The definitions of "large school food authority" and "small school food authority" are removed from 7 CFR 210.18(b), as these definitions were used in the determination of which SFAs received a follow-up review. The same definition of "large school food authority" is added to 7 CFR part 235, State Administrative Expense Funds, where it remains relevant for the State Administrative Expense allocation process.

General Areas of Review

The final rule expands the general areas of review to include existing and new requirements grouped into two broad categories: Resource Management and General Program Compliance.

Resource Management is a new general area of the administrative review, established in 7 CFR 210.18(h)(1), that assesses compliance with existing requirements that safeguard the overall financial health of the nonprofit school food service. The SA must use the *Resource Management Risk Indicator Tool* to identify if the SFA is at high risk for Resource Management violations, and only then conduct a comprehensive Resource Management review as described in the FNS *Administrative Review Manual.* The comprehensive review must include, but is not limited to the following:

- Maintenance of the Nonprofit School Food Service Account—7 CFR 210.2, 210.14, 210.19(a) and 210.21;
- Paid Lunch Equity—7 CFR 210.14(e);
- Revenue from Nonprogram Foods—7 CFR 210.14(f); and
- Indirect Costs—2 CFR part 200 and 7 CFR 210.14(g).

Adding Resource Management to the administrative review establishes a framework for this review area, promotes review consistency among all States, and strengthens stewardship of Federal funds. Requiring an off-site review of Resource Management allows the reviewer to use the expertise of off-site SA staff with specialized knowledge of Resource Management that may not typically be present during an on-site review. Under 7 CFR 210.18(h)(1) of the final rule provides SAs some flexibility in the review of Resource Management, provided the minimum areas of review are covered.

It is also important to note that this final rule adds a new paragraph (g) to the Resource Management requirements in 7 CFR 210.14 to clarify the SFA's existing responsibilities with regard to indirect costs. This is discussed later in the preamble under the heading, "IV. Changes to SFA Requirements."

7 CFR 210.18(h)(2), *General Program Compliance, of the final rule* focuses on the SFA compliance with the existing general areas: *free and reduced price process, civil rights, SFA on-site monitoring, reporting and recordkeeping,* and *food safety.* The final rule expands the general areas to include the requirements established by HHFKA for competitive food standards, water, outreach for the SBP and Summer Food Service Program (SFSP), professional standards, and local school wellness. The final rule moves the existing oversight of outreach for SBP and SFSP from 7 CFR 210.19(g) to the general areas of review under 7 CFR 210.18(h)(2).

In total, the general areas of review must include, but are not limited to, the following:

- Free and Reduced Price Process—including verification, notification, and other procedures—7 CFR part 245.
- Civil Rights—7 CFR 210.23(b).
- SFA On-site Monitoring—7 CFR 210.8(a) and 220.11(d).
- Reporting and Recordkeeping—7 CFR parts 210, 220 and 245.
- Food Safety—7 CFR 210.13.
- Competitive Food Services—7 CFR 210.11 and 7 CFR 220.12.
- Water—7 CFR 210.10(a)(1)(i) and 7 CFR 220.8(a)(1).
- Professional Standards—7 CFR 210.30.
- SBP and SFSP Outreach—7 CFR 210.12(d).
- Local School Wellness Policies.

LEAs have been required to have local school wellness policies in place since 2006. Assessing compliance with this requirement has been a general area of review under the CRE, and is included in the *Administrative Review Manual.* The Department has issued a separate rulemaking, Local School Wellness Policy Implementation Under the Healthy, Hunger-Free Kids Act of 2010, 79 FR 10693 (2/26/14), to solicit public comment on the proposed implementation of section 204 of the HHFKA. The administrative review guidance will be updated to reflect finalized requirements.

Finally, as noted later in the preamble, this final rule expands the existing requirement for SFAs to conduct on-site monitoring. This change to 7 CFR 210.8, is discussed in more detail later under the heading "IV. Changes to SFA Requirements."

Other Federal Program Reviews

The review of *other Federal programs* is a new aspect of the unified accountability system for school meals. It ensures that SAs monitor the NSLP's Afterschool Snacks and SSO, the SMP, and the FFVP when these programs are administered by the SFA under review. The SA must review selected critical areas established in 7 CFR 210.18(g), as applicable, when conducting administrative reviews of the NSLP's Afterschool Snacks and SSO, and of the SMP. In addition, the SA must review selected general areas established in 7 CFR 210.18(h), as applicable, when conducting administrative reviews of the NSLP's Afterschool Snacks and SSO, the FFVP, and the SMP. The FNS *Administrative Review Manual* specifies how the SA must assess the applicable critical and general areas when reviewing these other school meal programs.

Previously, a SA was only required to monitor the certification, count and milk/meal service procedures for the SMP (7 CFR part 215) or the NSLP Afterschool Snacks (7 CFR part 210) during a follow-up review if the SA had not evaluated these programs previously in the schools selected for an administrative review. This final rule includes other school meal programs in the regular, periodic review of SFA operations because it is critical that they are properly administered in order to improve program integrity overall.

Other Federal Program Reviews helps ensure that the SFA operates the other school meal programs in accordance with key regulatory requirements. In most cases, the review of other school meal programs includes the following:

To review NSLP Afterschool Snacks, the SA must:

- Use the *Supplemental Afterschool Snacks Administrative Review Form.*
- Review the school's eligibility for Afterschool Snacks.
- Ensure the school complies with counting and claiming procedures.
- Confirm the SFA conducts self-monitoring activities twice per year as required in 7 CFR 210.9(c)(7).
- Assess compliance with the snack meal pattern in 7 CFR 210.10(o).
- Monitor compliance with the reporting and recordkeeping, food safety and civil rights requirements in 7 CFR 210.

To review the NSLP SSO, the SA must, at a minimum:

- Use the *Supplemental Seamless Summer Option Administrative Review Form.*
- Verify the site eligibility for the SSO.
- Ensure the SFA monitors the site(s) at least once per year.
- Review meal counting and claiming procedures.
- Monitor compliance with the meal patterns for meals in 7 CFR 210.10 and 7 CFR 220.8.
- Confirm the SFA informs families of the availability of free meals.
- Monitor compliance with the reporting and recordkeeping, food safety and civil rights requirements in 7 CFR 210.

To review the SMP (in NSLP schools), the SA must, at a minimum:

- Use the *Supplemental Special Milk Program Administrative Review Form.*
- Review the milk pricing policy, counting and claiming, and milk service procedures.
- Observe the milk service at the reviewed site if there are issues with the meal counting and claiming procedures in the NSLP or SBP.
- Ensure accuracy in certification and benefit issuance, when observing milk service.
- Monitor compliance reporting and recordkeeping, food safety and civil rights requirements in 7 CFR 215.

To review the FFVP, the SA must at a minimum:

- Confirm availability of benefits to all enrolled children free of charge.
- Monitor allowable program costs, service time, outreach efforts, and types of fruits and vegetables offered.
- Monitor compliance with the reporting and recordkeeping, food safety and civil rights requirements in 7 CFR 210.

The Department has issued separate rulemaking, Fresh Fruit and Vegetable Program, 77 FR 10981 (2/24/2012) to solicit public comment on the proposed implementation of the FFVP. Currently, the program is operated under guidance that follows general requirements for program operations under 7 CFR 210. When the FFVP final rule is published, the implementing administrative review regulations will reflect any necessary changes.

Fiscal Action

SAs must identify the SFA's correct entitlement and take fiscal action when any SFA claims or receives more Federal funds than earned. This final rule continues to require SAs to take fiscal action for all PS–1 violations and for specific PS–2 violations, as discussed next. While no fiscal action is required for general area violations, the SA has the ability to withhold funds for repeat or egregious violations occurring in the majority of the general areas. This final rule also expands the scope of fiscal action for certification/benefit issuance PS–1 violations, revises the method to calculate fiscal action for applicable violations, and modifies the SA's authority to limit fiscal action for specific critical area violations when corrective action is completed.

Details about the changes to fiscal action follow.

PS–1 Violations

SAs are required to take fiscal action for all certification, benefit issuance, meal counting, and claiming violations of PS–1. For the Certification and Benefit Issuance portion of the updated administrative review, 7 CFR 210.18(g) of this final rule requires the SAs to review certifications/benefit issuance for all the schools under the SFA's jurisdiction, not just the reviewed schools. This broader scope of review is expected to provide the SA with a more accurate picture of the SFA's practices at all participating schools under its jurisdiction and lead to improved program integrity.

Given the broader scope of the Certification and Benefit Issuance review at the SFA level, this rule makes several changes to the related fiscal action. Section 210.18(l)(l) of this final rule applies fiscal action for certification and benefit issuance errors to the entire SFA, including non-reviewed schools. Expanding fiscal action across the entire SFA differs from the existing CRE review, and from the interim administrative review approach used by a number of SA operating under a waiver using the updated *Administrative Review Manual.* Under CRE and the interim administrative review approach, fiscal action was generally limited to the reviewed schools.

For certification and benefit issuance errors cited under paragraph (g)(1)(i) of this section, the total number of free and reduced price meals claimed must be adjusted according to procedures established by FNS.

This method to calculate fiscal action at the SFA level differs from the CRE approach, which based fiscal action on the number of incorrect certifications in reviewed schools and the corresponding number of serving days. This approach streamlines the determination of fiscal action and ensures program integrity SFA-wide. To reflect the expanded scope of review, the final rule also amends language in 7 CFR 210.19(c) to indicate that fiscal action applies to "meals" (rather than just lunches) and the SMP at 7 CFR part 215.

PS–2 Violations—Missing Food Component and Production Records

Under 7 CFR 210.18(l)(2)(i) of the final rule, SAs must continue to take fiscal action for PS–2 missing food component violations. Although fiscal action would generally be applied to the reviewed school (as previously done), if a centralized menu is in place, the SA should evaluate the cause(s) of the violation to determine if it is appropriate to apply fiscal action SFA-wide.

In addition, the final rule requires the SA to assess fiscal action on meals claimed for reimbursement that are not supported by appropriate documentation. An SFA must document that it offers reimbursable meals and maintain documentation that demonstrates how meals offered to students meet meal pattern requirements. If production records are missing, or missing for a certain time period, the final rule requires the SA to take fiscal action unless the SFA is able to demonstrate to the satisfaction of the SA, that reimbursable meals were offered and served.

Duration of Fiscal Action for PS–1 Violations and PS–2 Violations Related to Missing Food Component and Production Records

Section 210.18(l)(3) of this final rule continues to require that SAs extend fiscal action back to the beginning of the school year or that point in time during the current school year when the infraction first occurred. Depending on the severity and longevity of the violation, the SA may extend fiscal action back to the beginning of the year or back to previous school years. However, this rule also provides some flexibility for SA to limit the duration of fiscal action when corrective action takes place for PS–1violations and for PS–2 violations that are related to food components and missing production records. The flexibility is as follows:

As stated in 7 CFR 210.18(l)(3)(i), for PS–1 certification and benefit issuance errors, fiscal action is required for the review period and the month of the on-site review, at a minimum. For example, if the review period is January and the month of the on-site review is February, then at a minimum fiscal action would be applied to the months of January and February. In scenarios where a month falls in between, *i.e.,* January is the review period and March is when the on-site review occurs, then fiscal action is applied to all three months.

As stated in 7 CFR 210.18(l)(3)(ii), for other PS–1 violations and for PS–2 violations relating to missing food components and missing production records:

- If corrective action occurs during the on-site review month, the SA must apply fiscal action from the point corrective action occurs back through the beginning of the on-site review month and for the review period. For example, if the review period is in January and the on-site review occurs in March and during the course of the review errors are identified and corrected on March 15, then fiscal action must be applied from March 1 through March 14 and for the entire review period, *i.e.,* January.
- If corrective action occurs during the review period, the SA must apply fiscal action from the point corrective action occurs back through the beginning of the review period. For example, if the review period is January and the on-site review occurs in March and it is determined that the problem was corrected on January15, then fiscal action would be applied from January 1 through January 14h.
- If corrective action occurs prior to the review period, no fiscal action is required. In this scenario, any error identified and corrected prior to the review period, *i.e.,* before January, it is not subject to fiscal action.
- If corrective action occurs in a claim month(s) between the review period and the on-site review month, the SA must apply fiscal action only to the review period. For example, if the review period is January and the on-site review occurs in March and the corrective action takes place in February, the SA must apply fiscal action only to the review period, *i.e.,* January.

For PS–2 Violations Related to Vegetable Subgroups. Milk Type, Food Quantities, Whole Grain-Rich Foods, and Dietary Specifications

Section 210.18(l)(2) of this final rule continues to require fiscal action for repeated PS–2 violations related to vegetable subgroups and milk type. For repeated PS–2 violations related to food quantities, whole grain-rich foods and the dietary specifications, fiscal action remains discretionary. The final rule specifies the scope and duration of fiscal action for these repeated PS–2 violations in 7 CFR 210.18(l)(2)(ii) through (l)(2)(v).

For purposes of administrative reviews, repeated violations are generally those identified during the administrative review of an SFA in one cycle and then identified again in the administrative review of the same SFA in the next review cycle. For example, if the SA finds a PS–2 violation (*e.g.,* unallowable milk type) in an SFA in the first review cycle (SY 2013–2016), and finds the same problem during the second review cycle (SY 2016–2019), fiscal action would be required during the second review cycle.

It is important to note that while fiscal action is generally limited to the repeated violation found in a subsequent administrative review cycle, SAs are required by 7 CFR 210.19(c) to take fiscal action for recurrent violations found in later visits to the SFA during the initial cycle (*e.g.,* technical assistance visits, follow-up reviews) if these violations reflect willful or egregious disregard of program requirements. This would not occur during SY 2013–2014 through SY 2015–2016, as FNS has indicated in the memorandum *Administrative Reviews and Certification for Performance-Based Reimbursement in School Year (SY) 2014–2015 (SP–54 2014),* and subsequent Question and Answer guidance documents, that repeat findings will not result in fiscal action if they are repeated in the first 3-year review cycle. Beginning in SY 2016–2017, SAs should contact FNS for guidance in these situations.

For repeated violations involving vegetable subgroups or milk requirements, the final rule continues to require the SA to take fiscal action provided that technical assistance has been provided by the SA, corrective action has been previously required and monitored by the SA, and the SFA remains in non-compliance with PS–2. The final rule at 7 CFR 210.18(l)(2)(ii) specifies how a State must apply fiscal action. Under the final rule, all meals offered with an unallowable milk type or with no milk variety will be disallowed for reimbursement. If one vegetable subgroup is not offered over the course of the week reviewed, the SA should evaluate the cause(s) of the error to determine the appropriate fiscal action required. When calculating the required fiscal action, the SA has discretion, as appropriate based on the cause and extent of the error, to disallow all meals served in the deficient week.

For repeated violations of quantities or the whole grain-rich foods and dietary specifications, the final rule continues to provide the SAs discretion to apply fiscal action provided that technical assistance has been given by the SA, corrective action has been previously required and monitored by the SA, and the SFA remains in noncompliance with quantity, whole grain rich and dietary specifications. Section 210.18(l)(2)(iii) of the final rule specifies how fiscal action may be applied.

For repeated violations involving food quantities or the whole grain-rich foods requirement, the SA has discretion to apply fiscal action. When evaluating the cause(s) of the error to determine the extent of the discretionary fiscal action, the reviewer must consider the following:

- If meals contain insufficient quantities of required food components, the affected meals may be disallowed/reclaimed.
- If no whole grain-rich foods are offered over the course of the week reviewed, all meals served in the deficient week may be disallowed/reclaimed.
- If insufficient whole grain-rich foods are offered, meals for one or more days during the week under review may be disallowed/reclaimed. The SA has discretion to select which day's meals may be disallowed/reclaimed. Additional meals may be disallowed/reclaimed at the SA's discretion.
- If a vegetable subgroup is offered in an insufficient quantity to meet the minimum weekly requirement, meals may be disallowed/reclaimed for one day that week. The SA has discretion to select which day's meals are disallowed/reclaimed. If the amount of fruit juice offered exceeds weekly limitations, or the amount of vegetable juice exceeds weekly limitations meals for the entire week may be disallowed/reclaimed.

For repeated violations of the dietary specifications, 7 CFR 210.18(l)(2)(iv) of the final rule specifies that the SA has discretion to take fiscal action and disallow/reclaim all meals for the entire week, if applicable, provided that technical assistance has been given by the SA, corrective action has been previously required and monitored by the SA, and the SFA remains noncompliant with the dietary specifications. If fiscal action is applied, it is limited to the school selected for the targeted menu review. A nutrient analysis using USDA-approved software is required to justify any fiscal action for noncompliance with the dietary specifications requirements.

The intent of these fiscal action modifications and clarifications is to promote program integrity. Clearly identifying the critical area violations that may result in fiscal action and the scope and duration of any fiscal action, will promote consistency in fiscal action procedures among SAs.

Transparency Requirement

Section 207 of the HHFKA amended section 22 of the NSLA (42 U.S.C. 1769c) to require SAs to report the final results of the administrative review to the public in the State in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary.

This final rule at 7 CFR 210.18(m) requires the SA to post a summary of the most recent final administrative review results for each SFA on the SA's publicly available Web site and provides the SA the option to strongly encourage each SFA to post a summary on the SFA's public Web site . The review summary must cover access and reimbursement (including eligibility and certification review results), an SFA's compliance with the meal patterns and the nutritional quality of school meals, the results of the review of the school nutrition environment (including food safety, local school wellness policy, and competitive foods), compliance related to civil rights, and general program participation. At a minimum, this would include the written notification of review findings provided to the SFAs Superintendent as required at 7 CFR 210.18.(i)(3). FNS will provide additional guidance on the appropriate format.

SAs must post this review summary no later than 30 days after the SA provides the final results of the administrative review to the SFA. The SA must also make a copy of the final administrative review report available to the public upon request.

In response to concerns expressed by commenters, this final rule provides SAs the discretion to strongly encourage that SFAs post a summary of the final results, or otherwise make them available to the public, and also to make a copy of the final administrative review report available to the public upon request. This option is consistent with the goal to promote transparency and accountability in program operations. It also reflects the fact that parents and stakeholders are increasingly aware of the potential benefits of the school meals programs and would like more information from the SFA.

Reporting and Recordkeeping

This final rule addresses, at 7 CFR 210.18(n) and (o), the SA's reporting and recordkeeping requirements associated with the updated administrative review process. It continues to require that SAs file the form FNS–640 but removes the reference to follow-up reviews. The final rule retains the basic record keeping requirements previously found at 210.18(p) but removes the recordkeeping requirement associated with follow-up reviews, which are no longer required. The reporting requirements associated with follow-up reviews in the previous 7 CFR 210.18(n) and 7 CFR 210.20(b)(7) is also eliminated.

The removal of the follow-up review is expected to streamline the administrative review process for SAs. As discussed earlier, the information collection associated with the updated forms and new tools required for the administrative review process will be addressed separately in a 60-day notice.

IV. Changes to SFA Requirements

Resource Management

As stated earlier, this final rule adds a new paragraph (g) in 7 CFR 210.14, *Resource Management,* to clarify SFA responsibilities regarding indirect costs that will be monitored by the SA during the administrative review. The additional regulatory language does not represent a new requirement for SFAs. The paragraph (g) reflects existing requirements in 2 CFR 200 that are applicable to the operators of the school meal programs. The intent of paragraph (g) is to highlight an SFA responsibility that often goes unnoticed because it is not clearly stated in 7 CFR 210.14.

Monitoring

To improve overall monitoring of the school meal programs, this final rule also expands the SFA on-site monitoring process. SFAs with more than one school are required to perform no less than one on-site review of the meal counting and claiming system employed by each school under its jurisdiction. The SFA must conduct the required on-site review prior to February 1 of each school year. The final rule at 7 CFR 210.8(a)(1) expands the scope of on-site monitoring to include the readily observable general areas of review cited under 7 CFR 210.18(h), as identified by FNS. Readily observable areas of review could include, but are not limited to, the availability of free potable water, proper food safety practices, and compliance with Civil Rights requirements.

In addition, the final rule extends the SFA's monitoring activities to the SBP. As stated in 7 CFR 220.11(d), the SFA must annually monitor the operation of the SBP at a minimum of 50 percent of the schools operating SBP under its jurisdiction, with each school operating the SBP to be monitored at least once every two years. As is currently done with the NSLP, this monitoring of the SBP would include the counting and claiming system used by a school and the general areas of review that are readily observable. This expansion of the SFA monitoring activities is intended to ensure that SFAs self-monitor and are aware of operational issues, and that schools receive ongoing guidance and technical assistance to facilitate compliance with program requirements.

V. Comparison of Administrative Review Requirements

The following chart summarizes the key existing, proposed, and final administrative review requirements and states the anticipated outcomes.

Existing requirement	Proposed rule	Final rule	Effect of change
Review location—SAs are required to conduct an on-site review of each SFA once every 3 years.	Review location— • The proposal would allow portions of the review to be conducted off-site and on-site. • No change to the 3-year cycle	Review Location— • The final rule allows portions of the review to be conducted off-site and on-site. • No change to the 3-year cycle	The change is expected to provide SAs with review flexibility, lower travel costs, and increase their ability to use in-house/off-site staff expertise to review complex documentation.

Existing requirement	Proposed rule	Final rule	Effect of change
Scope of review—The scope of review covers both critical and general areas for the NSLP and SBP. The critical areas, PS–1 and PS–2, assess whether meals claimed for reimbursement are served to children eligible for free, reduced price, and paid meals; are counted, recorded and consolidated, and reported through a system that consistently yields correct claims; and meet meal pattern requirements.. The general areas assess whether the SFA met other program requirements related to free and reduced price process, civil rights, SFA monitoring, food safety, and reporting and recordkeeping.	Scope of review— • The proposal retains the focus on critical and general areas of review, but would expand the general areas of review for a more robust monitoring process. • New general areas would include: Resource Management, Competitive Food Services, Water and SBP and SFSP Outreach. • In addition, the proposal would add Other Federal Program reviews and would introduce risk assessment protocols to target at risk schools/districts	Scope of review— • The final rule retains the focus on critical and general areas of review, but expands the general areas of review. • New general areas include: Resource Management, Competitive Food Services, Water, SBP and SFSP Outreach, Professional Standards, and Local School Wellness Policies. • In addition, the final rule adds Other Federal Program reviews and introduces risk assessment protocols to target at risk schools/districts	The final rule establishes the unified review system envisioned by the HHFKA. While the final rule expands the scope of review by adding new general areas and Other Federal Program reviews, it also provides efficiencies resulting from offsite monitoring, risk assessment protocols, and automated forms. Overall, the change is expected to reduce the review burden on SAs and increase program integrity.
Minimum Number of Schools to Review—SAs must review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event must the SA review less than the minimum number of schools.	Minimum Number of Schools to Review • The proposed rule retained that the SA must review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. • In no event must the SA review less than the minimum number of schools	Minimum Number of Schools to Review • The final rule retains that State agency must review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. • In no event must the State agency review less than the minimum number of schools. • The final rule adds that the SA must review at least one school from each LEA	The final rule makes clear the statutory requirement that the SA must select schools for review in each LEA using criteria established by the Secretary.
Eligibility certification—SAs review the free and reduced price certifications for children in schools selected for review.	Eligibility certification • The proposal would require SAs to review the free and reduced price certifications made by the local educational agency in all schools in the district or a statistically valid sample of those certifications	Eligibility certification • The final rule requires SAs to review all free and reduced price certifications made by the local educational agency in all schools in the district or a statistically valid sample of those certifications	The change is expected to improve program integrity across the SFA. No change in burden is expected since the SA has the option to review a statistically valid sample of applications.
Fiscal action—Fiscal action for certification and benefit issuance violations is calculated based on errors in the reviewed schools.	Fiscal action— • Fiscal action for certification and benefit issuance violations would apply to the entire SFA, including non-reviewed schools and would be determined in a manner prescribed by FNS. • The proposal would also prescribe the extent of fiscal action for repeated PS–2 violations. • If corrective action takes place, the duration of fiscal action for PS–1 and specific PS–2 violations could also be revised.	Fiscal action— • The final rule requires that fiscal action for certification and benefit issuance violations apply to the entire SFA, including non-reviewed schools and is to be determined in a manner prescribed by FNS. • The final rule also prescribes the extent of fiscal action for PS–1 violations and repeated PS–2 violations. • If corrective action takes place, the SA may limit the duration of fiscal action for PS–1 and specific PS–2 violations	The change is expected to promote consistency and accuracy in fiscal action procedures used by SAs nationwide.

Existing requirement	Proposed rule	Final rule	Effect of change
Meal pattern and dietary specifications—SAs must review the meal service for the day of review and menu and production records for a minimum period of 5 days. SAs must conduct a weighted nutrient analysis for each reviewed school.	Meal pattern and dietary specifications. • The SAs would continue to review the meal service for the day of review, and menus and production records for 3–7 days. If the review reveals problems with components or quantities, the SA would expand the review to, at a minimum, the entire review period. • The proposed rule would require the SAs to conduct a meal compliance risk assessment for all schools under review to identify the school at highest risk for nutrition-related violations, and to conduct a targeted menu review for that single school. • If the targeted menu review confirms the school is at high risk for dietary specification violations, a weighted nutrient analysis for that school would be required	Meal pattern and dietary specifications • The SAs continue to review the meal service for the day of review, and menus and production records for 3–7 days. If the review reveals problems with components or quantities, the SA expands the review to, at a minimum, the entire review period. • This final rule requires the SAs to: (1) Conduct a meal compliance risk assessment for all schools under review to identify the school at highest risk for nutrition-related violations; (2) to conduct a targeted menu review for that single school using one of four options. • If the targeted menu review confirms the school is at high risk for dietary specification violations, a weighted nutrient analysis for that school is required	Requiring a weighted nutrient analysis only for a school determined to be at highest risk for dietary specification violations makes the best use of limited SA resources. This change is expected to improve program integrity by focusing time and effort on at risk schools.
Follow-up reviews—SAs are required to determine whether an SFA has violations in excess of specified thresholds and, if so, conduct follow-up reviews within specified timeframes.	Follow-up reviews • The proposal would eliminate the required follow-up reviews and corresponding review thresholds. • Follow-up reviews would be at the SA's discretion.	Follow-up reviews • The final rule eliminates the required follow-up reviews and corresponding review thresholds. • Follow-up reviews are at the SA's discretion	The change recognizes that SAs will be conducting reviews on a more frequent basis. It provides States with the flexibility to conduct follow-up review activity at their discretion.
Reporting and recordkeeping—SAs are required to notify FNS of the names of large SFAs in need of a follow-up review. SAs are required to maintain records regarding its criteria for selecting schools for follow-up reviews.	Reporting and recordkeeping • The proposal would eliminate the follow-up review reporting and recordkeeping requirements	Reporting and recordkeeping • The final rule eliminates the follow-up review reporting and recordkeeping requirements	The change reduces reporting burden for SAs.
Posting of final review results—No existing requirements.	Posting of final review results • The proposal would require SAs to make the final results of each SFA administrative review available to the public in an accessible, easily understood manner in accordance with guidelines established by the Secretary; such results must also be posted and otherwise made available to the public on request	Posting of final review results • The final rule requires SAs to make the final results of administrative reviews available to the public in an accessible, easily understood manner in accordance with guidelines established by the Secretary; such results must also be posted and otherwise made available to the public on request. • SAs have the discretion to require SFAs to post the results	Posting this information online is expected to enhance awareness of school and SFA performance at meeting the requirements of the school meal programs and increase informed involvement of parents in the program. The increased reporting burden associated with the posting is expected to be minor.
Include other Federal school nutrition programs in a follow up review—If the SA did not evaluate the certification, count and milk/meal service procedures for the SMP or afterschool care programs in the schools selected for an administrative review, it must do so during the follow-up review.	Include other Federal school nutrition programs in the administrative review • The proposal would require SAs to review NSLP afterschool snacks and SSO, the SMP, and the FFVP as part of the administrative review under 7 CFR 210.18	Include other Federal school nutrition programs in the administrative review • The final rule requires SAs to review t NSLP afterschool snacks and SSO, the SMP, and the FFVP as part of the administrative review under 7 CFR 210.18	The change fosters integrity of all school meal programs, and promotes efficiency.

Comparison SFA Requirements

The following chart summarizes SFA requirements associated with the administrative review process.

Existing requirement	Proposed rule	Final rule	Effect of change
Resource Management—7 CFR 210.8 does not address indirect costs explicitly.	Resource Management • This proposal would add text in 7 CFR 210.14 to clarify the SFA's existing responsibilities with regard to indirect costs.	Resource Management • This final rule adds text in 7 CFR 210.14 to clarify the SFA's existing responsibilities with regard to indirect costs.	The change increases understanding of indirect cost responsibilities that are monitored by the SA under the proposed administrative review.
SFA monitoring—SFAs are required to monitor the lunch counting and claiming processes schools annually.	SFA monitoring • The proposal would require the SFA to also monitor the SBP; and. • to expand the annual school review by including selected general areas of review that are readily observable.	SFA monitoring • The final rule requires the SFA to also monitor the SBP in 50 percent of schools operating the SBP annually, with all schools being monitored at least once every two years; and. • to expand the annual school review by including selected general areas of review that are readily observable.	The change results in a more robust and effective SFA monitoring process, which contributes to the integrity of the school meal programs.

VI. Miscellaneous Changes

This final rule makes a number of miscellaneous changes to conform with other changes in the school meals programs:

- Deletes obsolete provision at 7 CFR 210.7(d)(1)(vi) related to validation reviews of performance-based reimbursement;
- Revises 7 CFR 210.9(b)(18) through 210.9(b)(20) and 210.15(b)(4) to reflect the diversity of certification mechanisms beyond household applications;
- Revises 7 CFR 210.19(a)(1) to reflect the Paid Lunch Equity requirements;
- Revises 7 CFR 210.19(a)(5) to update the review frequency to 3 years conforming with the requirement at 210.18(c); and
- Deletes obsolete provisions at 7 CFR 210.20(b)(7) and 210.23(d).

VII. Procedural Matters

A. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866 and has been determined to be Not Significant.

B. Regulatory Impact Analysis

This final rule has been designated by the Office of Management and Budget (OMB) to be Not Significant; therefore a Regulatory Impact Analysis is not required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review it has been certified that this final rule would not have a significant impact on a substantial number of small entities. This final rule updates the administrative review process that State agencies must follow to monitor compliance with school meal programs' requirements. The administrative review process provides State agencies more flexibility, tools and streamlined procedures. FNS does not expect that the final rule will have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for 2015 inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12372

The nutrition assistance programs and areas affected by this final rule are listed in the Catalog of Federal Domestic Assistance as follows:

- National School Lunch Program, No. 10.555
- School Breakfast Program, No. 10.553
- Special Milk Program, No. 10.556
- State Administrative Expenses for Child Nutrition, No. 10.560
- Fresh Fruit and Vegetable Program, No. 10.582

For the reasons set forth in 2 CFR chapters IV, the nutrition assistance programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. The Child Nutrition Programs are federally funded programs administered at the State level. FNS headquarters and regional office staff engage in ongoing formal and informal discussions with State and local officials regarding program operational issues. The structure of the Child Nutrition Programs allows State and local agencies to provide feedback that contributes to the development of meaningful and feasible program requirements. This final rule has taken into account the extensive experience of State agencies conducting the administrative reviews which would be updated by this rule.

F. Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

1. Prior Consultation With State Officials

FNS headquarters and regional offices have formal and informal discussions with State agency officials on an ongoing basis regarding the Child Nutrition Programs and policy issues. In addition, prior to drafting this final rule, FNS assembled a 26-member team consisting of staff from FNS Headquarters and the seven Regional Offices, and State Agency staff from Kansas, Michigan, New York, North Carolina, Oregon, Pennsylvania and Texas. The School Meal Administrative Review Reinvention Team (SMARRT) worked together for a year to address issues and develop an updated review process that is responsive to the needs, wants, and challenges of the State agencies.

2. Nature of Concerns and the Need To Issue This Rule

The Healthy, Hunger-Free Kids Act of 2010 (HHFKA) amended section 22 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1769c, to require that:

a. The administrative review process be a unified accountability system; and

b. When any SFA is reviewed under this section, ensure that the final results of the review by the State educational agency are posted and otherwise made available to the public on request in an accessible, easily understood manner in accordance with guidelines promulgated by the Secretary.

This final rule updates the administrative review process established in 7 CFR 210.18 to carry out these two statutory requirements. In addition, the final rule would also make a number of changes to address issues and concerns raised by State agencies. Issues identified by State agencies include simplifying the administrative review and fiscal action. State agencies also want the administrative reviews to be meaningful and contribute to better meal service. They also want a review process that would allow them to better utilize the limited resources they have.

3. Extent To Which the Department Meets Those Concerns

FNS has considered the concerns identified by SMARRT. The administrative review process in this final rule streamlines review procedures to allow more time for technical assistance, emphasizes risk-assessment to enable the State agency to focus the administrative review on school food authorities at high risk for noncompliance, and provides State agencies flexibility to conduct portions of the review off-site to make better use of limited resources.

G. Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, appeal procedures as redesignated by this rule in 7 CFR 210.18(p) and 7 CFR 235.11(f) of this chapter must be exhausted.

H. Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes. In spring 2011, FNS offered five opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy, Hunger-Free Kids Act of 2010 on tribes or Indian Tribal governments. FNS followed up with conference calls on February 13, 2013; May 22, 2013; August 21, 2013 and November 6, 2013. These consultation sessions provide the opportunity to address Tribal concerns related to the School Meals Programs. Additionally, FNS has provided ongoing updates regarding the progress of the administrative review process. To date, Indian Tribal governments have not expressed concerns about the required unified accountability system during these consultations.

USDA is unaware of any current Tribal laws that could be in conflict with the final rule. The Department will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule.

I. Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex, or disability. A careful review of the rule's intent and provisions revealed that this final rule is not intended to reduce a child's ability to participate in the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, or Special Milk Program.

J. Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection included in this final rule, which were filed under 0584–0006, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, FNS will publish a notice in the **Federal Register** of the action.

K. E-Government Act Compliance

FNS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

List of Subjects

7 CFR Parts 210

Grant programs-education; Grant programs-health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs; Surplus agricultural commodities.

7 CFR Parts 215

Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, Milk, Reporting and recordkeeping requirements.

7 CFR Parts 220

Grant programs-education; Grant programs-health; Infants and children; Nutrition; Reporting and recordkeeping requirements; School breakfast and lunch programs.

7 CFR Parts 235

Administrative practice and procedure; Food assistance programs; Grant programs-education; Grant programs-health; Infants and children;

Reporting and recordkeeping requirements; School breakfast and lunch programs.

Accordingly, 7 CFR parts 210, 215, 220, and 235 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C.1751–1760, 1779.

■ 2. In part 210, remove the word "SF–269" wherever it appears and add in its place the word "FNS–777".

§ 210.7 [Amended]

■ 3. In § 210.7, remove paragraph (d)(1)(vii) and redesignate paragraph (d)(1)(viii) as paragraph (d)(1)(vii).

§ 210.8 [Amended]

■ 4. In § 210.8:
■ a. In paragraph (a) introductory text, remove the words "lunch" and "lunches" wherever they appear and add in their place the words "meal" and "meals" respectively.
■ b. In paragraph (a)(1):
■ i. In the first sentence, remove the word "lunch";
■ ii. In the first sentence, remove the words "employed by" and add in their place the words "and the readily observable general areas of review cited under § 210.18(h), as prescribed by FNS for";
■ iii. In the third sentence, add the words "or general review areas" after the word "procedures"; and
■ iv. In the fourth sentence, remove the word "lunches" and add in its place the word "meals"; and
■ c. In paragraph (a)(3)(ii), remove the word "subsequent".

■ 5. In § 210.9:
■ a. In paragraph (b)(18), remove the words "applications which must be readily retrievable by school" and add in their place the words "certification documentation";
■ b. Revise paragraph (b)(19) introductory text; and
■ c. Revise paragraph (b)(20).

The revisions read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) * * *

(19) Maintain direct certification documentation obtained directly from the appropriate State or local agency, or other appropriate individual, as specified by FNS, indicating that:

* * * * *

(20) Retain eligibility documentation submitted by families for a period of 3 years after the end of the fiscal year to which they pertain or as otherwise specified under paragraph (b)(17) of this section.

* * * * *

■ 6. In § 210.10:
■ a. In paragraph (h), revise the subject heading;
■ b. In paragraph (h)(1), revise the first sentence;
■ c. Revise paragraph (i) subject heading and paragraph (i)(1);
■ d. Revise paragraph (i)(3)(i);
■ e. In paragraph (j), revise the paragraph heading; and
■ f. Add paragraph (o)(5).

The revisions and addition read as follows:

§ 210.10 Meal requirements for lunches and requirements for afterschool snacks.

* * * * *

(h) *Monitoring dietary specifications.* (1) * * * When required by the administrative review process set forth in § 210.18, the State agency must conduct a weighted nutrient analysis to evaluate the average levels of calories, saturated fat, and sodium of the lunches offered to students in grades K and above during one week of the review period. * * *

* * * * *

(i) *Nutrient analyses of school meals*—(1) *Conducting the nutrient analysis.* Any nutrient analysis, whether conducted by the State agency under § 210.18 or by the school food authority, must be performed in accordance with the procedures established in paragraph (i)(3) of this section. The purpose of the nutrient analysis is to determine the average levels of calories, saturated fat, and sodium in the meals offered to each age grade group over a school week. The weighted nutrient analysis must be performed as required by FNS guidance.

* * * * *

(3) * * *

(i) *Weighted averages.* The nutrient analysis must include all foods offered as part of the reimbursable meals during one week within the review period. Foods items are included based on the portion sizes and serving amounts. They are also weighted based on their proportionate contribution to the meals offered. This means that food items offered more frequently are weighted more heavily than those not offered as frequently. The weighted nutrient analysis must be performed as required by FNS guidance.

* * * * *

(j) *Responsibility for monitoring meal requirements.* * * *

* * * * *

(o) * * *

(5) *Monitoring afterschool snacks.* Compliance with the requirements of this paragraph is monitored by the State agency as part of the administrative review conducted under § 210.18. If the snacks offered do not meet the requirements of this paragraph, the State agency or school food authority must provide technical assistance and require corrective action. In addition, the State agency must take fiscal action, as authorized in §§ 210.18(l) and 210.19(c).

* * * * *

■ 7. In § 210.14, add a sentence at the end of paragraph (d) and add paragraph (g) to read as follows:

§ 210.14 Resource management.

* * * * *

(d) * * * The school food authority's policies, procedures, and records must account for the receipt, full value, proper storage and use of donated foods.

* * * * *

(g) *Indirect costs.* School food authorities must follow fair and consistent methodologies to identify and allocate allowable indirect costs to the nonprofit school food service account, in accordance with 2 CFR part 200 as implemented by 2 CFR part 400.

§ 210.15 [Amended]

■ 8. In § 210.15, in paragraph (b)(4), remove the words "applications for" and add in their place the words "certification documentation for".
■ 9. Revise § 210.18 to read as follows:

§ 210.18 Administrative reviews.

(a) *Programs covered and methodology.* Each State agency must follow the requirements of this section to conduct administrative reviews of school food authorities participating in the National School Lunch Program and the School Breakfast Program (part 220 of this chapter). These procedures must also be followed, as applicable, to conduct administrative reviews of the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, the Special Milk Program (part 215 of this chapter), and the Fresh Fruit and Vegetable Program. To conduct a program review, the State agency must gather and assess information off-site and/or on-site, observe the school food service operation, and use a risk-based approach to evaluate compliance with specific program requirements.

(b) *Definitions.* The following definitions are provided in alphabetical order in order to clarify State agency administrative review requirements:

Administrative reviews means the comprehensive off-site and/or on-site evaluation of all school food authorities participating in the programs specified in paragraph (a) of this section. The term "administrative review" is used to reflect a review of both critical and general areas in accordance with paragraphs (g) and (h) of this section, as applicable for each reviewed program, and includes other areas of program operations determined by the State agency to be important to program performance.

Critical areas means the following two performance standards described in detail in paragraph (g) of this section:

(i) *Performance Standard 1*—All free, reduced price and paid school meals claimed for reimbursement are served only to children eligible for free, reduced price and paid school meals, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims.

(ii) *Performance Standard 2*—Reimbursable lunches meet the meal requirements in § 210.10, as applicable to the age/grade group reviewed. Reimbursable breakfasts meet the meal requirements in § 220.8 of this chapter, as applicable to the age/grade group reviewed.

Day of Review means the day(s) on which the on-site review of the individual sites selected for review occurs.

Documented corrective action means written notification required of the school food authority to certify that the corrective action required for each violation has been completed and to notify the State agency of the dates of completion. Documented corrective action may be provided at the time of the review or may be submitted to the State agency within specified timeframes.

General areas means the areas of review specified in paragraph (h) of this section. These areas include free and reduced price process, civil rights, school food authority on-site monitoring, reporting and recordkeeping, food safety, competitive food services, water, program outreach, resource management, and other areas identified by FNS.

Participation factor means the percentages of children approved by the school for free meals, reduced price meals, and paid meals, respectively, who are participating in the Program. The free participation factor is derived by dividing the number of free lunches claimed for any given period by the product of the number of children approved for free lunches for the same period times the operating days in that period. A similar computation is used to determine the reduced price and paid participation factors. The number of children approved for paid meals is derived by subtracting the number of children approved for free and reduced price meals for any given period from the total number of children enrolled in the reviewed school for the same period of time, if available. If such enrollment figures are not available, the most recent total number of children enrolled must be used. If school food authority participation factors are unavailable or unreliable, State-wide data must be employed.

Review period means the most recent month for which a Claim for Reimbursement was submitted, provided that it covers at least ten (10) operating days.

(c) *Timing of reviews.* State agencies must conduct administrative reviews of all school food authorities participating in the National School Lunch Program (including the Afterschool Snacks and the Seamless Summer Option) and School Breakfast Program at least once during a 3-year review cycle, provided that each school food authority is reviewed at least once every 4 years. For each State agency, the first 3-year review cycle started the school year that began on July 1, 2013, and ended on June 30, 2014. At a minimum, the on-site portion of the administrative review must be completed during the school year in which the review was begun.

(1) *Review cycle exceptions.* FNS may, on an individual school food authority basis, approve written requests for 1-year extensions to the 3-year review cycle specified in paragraph (c) of this section if FNS determines this 3-year cycle requirement conflicts with efficient State agency management of the programs.

(2) *Follow-up reviews.* The State agency may conduct follow-up reviews in school food authorities where significant or repeated critical or general violations exist. The State agency may conduct follow-up reviews in the same school year as the administrative review.

(d) *Scheduling school food authorities.* The State agency must use its own criteria to schedule school food authorities for administrative reviews; provided that the requirements of paragraph (c) of this section are met. State agencies may take into consideration the findings of the claims review process required under § 210.8(b)(2) in the selection of school food authorities.

(1) *Schedule of reviews.* To ensure no unintended overlap occurs, the State agency must inform FNS of the anticipated schedule of school food authority reviews upon request.

(2) *Exceptions.* In any school year in which FNS or the Office of the Inspector General (OIG) conducts a review or investigation of a school food authority in accordance with § 210.19(a)(4), the State agency must, unless otherwise authorized by FNS, delay conduct of a scheduled administrative review until the following school year. The State agency must document any exception authorized under this paragraph.

(e) *Number of schools to review.* At a minimum, the State agency must review the number of schools specified in paragraph (e)(1) of this section and must select the schools to be reviewed on the basis of the school selection criteria specified in paragraph (e)(2) of this section. The State agency may review all schools meeting the school selection criteria specified in paragraph (e)(2) of this section.

(1) *Minimum number of schools.* State agencies must review at least one school from each local education agency. Except for residential child care institutions, the State agency must review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event must the State agency review less than the minimum number of schools illustrated in Table A for the National School Lunch Program.

TABLE A

Number of schools in the school food authority	Minimum number of schools to review
1 to 5	1
6 to 10	2
11 to 20	3
21 to 40	4
41 to 60	6
61 to 80	8
81 to 100	10
101 or more	*12

*Twelve plus 5 percent of the number of schools over 100. Fractions must be rounded up (>0.5) or down (<0.5) to the nearest whole number.

(2) *School selection criteria.* (i) Selection of additional schools to meet the minimum number of schools required under paragraph (e)(1) of this section, must be based on the following criteria:

(A) Elementary schools with a free average daily participation of 100 or more and a free participation factor of 97 percent or more;

(B) Secondary schools with a free average daily participation of 100 or more and a free participation factor of 77 percent or more; and

(C) Combination schools with a free average daily participation of 100 or more and a free participation factor of 87 percent or more. A combination school means a school with a mixture of elementary and secondary grades.

(ii) When the number of schools selected on the basis of the criteria established in paragraph (e)(2)(i) of this section is not sufficient to meet the minimum number of schools required under paragraph (e)(1) of this section, the additional schools selected for review must be identified using State agency criteria which may include low participation schools; recommendations from a food service director based on findings from the on-site visits or the claims review process required under § 210.8(a); or any school in which the daily meal counts appear questionable (*e.g.*, identical or very similar claiming patterns, or large changes in free meal counts).

(iii) In selecting schools for an administrative review of the School Breakfast Program, State agencies must follow the selection criteria set forth in this paragraph and FNS' *Administrative Review Manual.* At a minimum:

(A) In school food authorities operating only the breakfast program, State agencies must review the number of schools set forth in Table A in paragraph (e)(1) of this section.

(B) In school food authorities operating both the lunch and breakfast programs, State agencies must review the breakfast program in 50 percent of the schools selected for an administrative review under paragraph (e)(1) of this section that operate the breakfast program.

(C) If none of the schools selected for an administrative review under paragraph (e)(1) of this section operates the breakfast program, but the school food authority operates the program elsewhere, the State agency must follow procedures in the FNS *Administrative Review Manual* to select at least one other site for a school breakfast review.

(3) *Site selection for other federal program reviews*—(i) *National School Lunch Program's Afterschool Snacks.* If a school selected for an administrative review under this section operates Afterschool Snacks, the State agency must review snack documentation for compliance with program requirements, according to the FNS *Administrative Review Manual.* Otherwise, the State agency is not required to review the Afterschool Snacks.

(ii) *National School Lunch Program's Seamless Summer Option.* The State agency must review Seamless Summer Option at a minimum of one site if the school food authority selected for review under this section operates the Seamless Summer Option. This review can take place at any site within the reviewed school food authority the summer before or after the school year in which the administrative review is scheduled. The State agency must review the Seamless Summer Option for compliance with program requirements, according to the FNS *Administrative Review Manual.*

(iii) *Fresh Fruit and Vegetable Program.* The State agency must review the Fresh Fruit and Vegetable Program at one or more of the schools selected for an administrative review, as specified in Table B. If none of the schools selected for the administrative review operates the Fresh Fruit and Vegetable Program but the school food authority operates the Program elsewhere, the State agency must follow procedures in the FNS *Administrative Review Manual* to select one or more sites for the program review.

TABLE B

Number of schools selected for an NSLP administrative review that operate the FFVP	Minimum number of FFVP schools to be reviewed
0 to 5	1
6 to 10	2
11 to 20	3
21 to 40	4
41 to 60	6
61 to 80	8
81 to 100	10
101 or more	12*

*Twelve plus 5 percent of the number of schools over 100. Fractions must be rounded up (>0.5) or down (<0.5) to the nearest whole number.

(iv) *Special Milk Program.* If a school selected for review under this section operates the Special Milk Program, the State agency must review the school's program documentation off-site or on-site, as prescribed in the FNS *Administrative Review Manual.* On-site review is only required if the State agency has identified documentation problems or if the State agency has identified meal counting or claiming errors in the reviews conducted under the National School Lunch Program or School Breakfast Program.

(4) *Pervasive problems.* If the State agency review finds pervasive problems in a school food authority, FNS may authorize the State agency to cease review activities prior to reviewing the required number of schools under paragraphs (e)(1) and (e)(3) of this section. Where FNS authorizes the State agency to cease review activity, FNS may either conduct the review activity itself or refer the school food authority to OIG.

(5) *Noncompliance with meal pattern requirements.* If the State agency determines there is significant noncompliance with the meal pattern and nutrition requirements set forth in § 210.10 and § 220.8 of this chapter, as applicable, the State agency must select the school food authority for administrative review earlier in the review cycle.

(f) *Scope of review.* During the course of an administrative review for the National School Lunch Program and the School Breakfast Program, the State agency must monitor compliance with the critical and general areas in paragraphs (g) and (h) of this section, respectively. State agencies may add additional review areas with FNS approval. Selected critical and general areas must be monitored when reviewing the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option, the Special Milk Program, and the Fresh Fruit and Vegetable Program, as applicable and as specified in the FNS *Administrative Review Manual.*

(1) *Review forms.* State agencies must use the administrative review forms, tools and workbooks prescribed by FNS.

(2) *Timeframes covered by the review.* (i) The timeframes covered by the administrative review includes the review period and the day of review, as defined in paragraph (b) of this section.

(ii) Subject to FNS approval, the State agency may conduct a review early in the school year, prior to the submission of a Claim for Reimbursement. In such cases, the review period must be the prior month of operation in the current school year, provided that such month includes at least 10 operating days.

(3) *Audit findings.* To prevent duplication of effort, the State agency may use any recent and currently applicable findings from Federally-required audit activity or from any State-imposed audit requirements. Such findings may be used only insofar as they pertain to the reviewed school(s) or the overall operation of the school food authority and they are relevant to the review period. The State agency must document the source and the date of the audit.

(g) *Critical areas of review.* The performance standards listed in this paragraph are directly linked to meal access and reimbursement, and to the meal pattern and nutritional quality of the reimbursable meals offered. These critical areas must be monitored by the State agency when conducting administrative reviews of the National School Lunch Program and the School Breakfast Program. Selected aspects of these critical areas must also be monitored, as applicable, when conducting administrative reviews of the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option, and of the Special Milk Program.

(1) *Performance Standard 1 (All free, reduced price and paid school meals claimed for reimbursement are served only to children eligible for free, reduced price and paid school meals, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims.)* The State agency must follow review procedures stated in this section and as specified in the FNS *Administrative Review Manual* to ensure that the school food authority's certification and benefit issuance processes for school meals offered under the National School Lunch Program, and School Breakfast Program are conducted as required in part 245 of this chapter, as applicable. In addition, the State agency must ensure that benefit counting, consolidation, recording and claiming are conducted as required in this part and part 220 of this chapter for the National School Lunch Program and the School Breakfast Program, respectively. The State agency must also follow procedures consistent with this section, and as specified in the FNS *Administrative Review Manual,* to review applicable areas of Performance Standard 1 in the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, and in the Special Milk Program.

(i) *Certification and benefit issuance.* The State agency must gather information and monitor the school food authority's compliance with program requirements regarding benefit application, direct certification, and categorical eligibility, as well as the transfer of benefits to the point-of-service benefit issuance document. To review this area, the State agency must obtain the benefit issuance document for each participating school under the jurisdiction of the school food authority for the day of review or a day in the review period, review all or a statistically valid sample of student certifications, and validate that the eligibility certification for free and reduced price meals was properly transferred to the benefit issuance document and reflects changes due to verification findings, transfers, or a household's decision to decline benefits. If the State agency chooses to review a statistically valid sample of student certifications, the State agency must use a sample size with a 99 percent confidence level of accuracy. However, a sample size with a 95 percent confidence level of accuracy may be used if a school food authority uses an electronic benefit issuance and certification system with no manual data entry and the State agency has not identified any potential systemic noncompliance. Any sample size must be large enough so that there is a 99 or 95 percent, as applicable, chance that the actual accuracy rate for all certifications is not less than 2 percentage points less than the accuracy rate found in the sample (*i.e.,* the lower bound of the one-sided 99/95 percent confidence interval is no more than 2 percentage points less than the point estimate).

(ii) *Meal counting and claiming.* The State agency must gather information and conduct an on-site visit to ensure that the processes used by the school food authority and reviewed school(s) to count, record, consolidate, and report the number of reimbursable meals/snacks served to eligible students by category (*i.e.,* free, reduced price or paid meal) are in compliance with program requirements and yield correct claims. The State agency must determine whether:

(A) The daily meal counts, by type, for the review period are more than the product of the number of children determined by the school/school food authority to be eligible for free, reduced price, and paid meals for the review period times an attendance factor. If the meal count, for any type, appears questionable or significantly exceeds the product of the number of eligibles, for that type, times an attendance factor, documentation showing good cause must be available for review by the State agency.

(B) For each school selected for review, each type of food service line provides accurate point of service meal counts, by type, and those meal counts are correctly counted and recorded. If an alternative counting system is employed (in accordance with § 210.7(c)(2)), the State agency shall ensure that it provides accurate counts of reimbursable meals, by type, and is correctly implemented as approved by the State agency.

(C) For each school selected for review, all meals are correctly counted, recorded, consolidated and reported for the day they are served.

(2) *Performance Standard 2 (Lunches claimed for reimbursement by the school food authority meet the meal requirements in § 210.10, as applicable to the age/grade group reviewed. Breakfasts claimed for reimbursement by the school food authority meet the meal requirements in § 220.8 of this chapter, as applicable to the age/grade group reviewed.)* The State agency must follow review procedures, as stated in this section and detailed in the FNS *Administrative Review Manual,* to ensure that meals offered by the school food authority meet the food component and quantity requirements and the dietary specifications for each program, as applicable. Review of these critical areas may occur off-site or on-site. The State agency must also follow procedures consistent with this section, as specified in the FNS *Administrative Review Manual,* to review applicable areas of Performance Standard 2 in the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, and in the Special Milk Program.

(i) *Food components and quantities.* For each school selected for review, the State agency must complete a USDA-approved menu tool, review documentation, and observe the meal service to ensure that meals offered by the reviewed schools meet the meal patterns for each program. To review this area, the State agency must:

(A) Review menu and production records for the reviewed schools for a minimum of one school week (*i.e.,* a minimum number of three consecutive school days and a maximum of seven consecutive school days) from the review period. Documentation, including food crediting documentation, such as food labels, product formulation statements, CN labels and bid documentation, must be reviewed to ensure compliance with the lunch and breakfast meal patterns. If the documentation review reveals problems with food components or quantities, the State agency must expand the review to, at a minimum, the entire review period. The State agency should consider a school food authority compliant with the school meal pattern if:

(*1*) When evaluating the daily and weekly range requirements for grains and meat/meat alternates, the documentation shows compliance with the daily and weekly minimums for these components, regardless of whether the school food authority has exceeded the recommended weekly maximums for the same components.

(*2*) When evaluating the service of frozen fruit, the State agency determines that the school food authority serves frozen fruit with or without added sugar.

(B) On the day of review, the State agency must:

(*1*) Observe a significant number of program meals, as described in the FNS *Administrative Review Manual,* at each serving line and review the corresponding documentation to determine whether all reimbursable meal service lines *offer* all of the required food components/items and quantities for the age/grade groups being served, as required under § 210.10, as applicable, and § 220.8 of this chapter, as applicable. Observe meals at the beginning, middle and end of the meal service line, and confirm that signage or other methods are used to assist students in identifying the reimbursable meal. If the State agency identifies missing components or inadequate quantities prior to the beginning of the meal service, it must inform the school food authority and provide an opportunity to make corrections. Additionally, if visual observation suggests that quantities offered are insufficient or excessive, the State agency must require the reviewed schools to provide documentation demonstrating that the required amounts of each component were available for service for each day of the review period.

(*2*) Observe a significant number of the program meals counted at the point of service for each type of serving line to determine whether the meals *selected* by the students contain the food components and food quantities required for a reimbursable meal under § 210.10, as applicable, and § 220.8 of this chapter, as applicable.

(*3*) If Offer versus Serve is in place, observe whether students select at least three food components at lunch and at least three food items at breakfasts, and that the lunches and breakfasts include at least ½ cup of fruits or vegetables.

(ii) *Dietary specifications.* The State agency must conduct a meal compliance risk assessment for each school selected for review to determine which school is at highest risk for nutrition-related violations. The State agency must conduct a targeted menu review for the school at highest risk for noncompliance using one of the options specified in the FNS *Administrative Review Manual.* Under the targeted menu review options, the State agency may conduct or validate an SFA-conducted nutrient analysis for both lunch and breakfast, or further evaluate risk for noncompliance and, at a minimum, conduct a nutrient analysis if further examination shows the school is at high risk for noncompliance with the dietary specifications in § 210.10 and § 220.8 of this chapter. The State agency is not required to assess compliance with the dietary specifications when reviewing meals for preschoolers, and the National School Lunch Program's Afterschool Snacks and the Seamless Summer Option.

(iii) *Performance-based cash assistance.* If the school food authority is receiving performance-based cash assistance under § 210.7(d), the State agency must assess the school food authority's meal service and documentation of lunches served and determine its continued eligibility for the performance-based cash assistance.

(h) *General areas of review.* The general areas listed in this paragraph reflect requirements that must be monitored by the State agency when conducting administrative reviews of the National School Lunch Program and the School Breakfast Program. Selected aspects of these general areas must also be monitored, as applicable and as specified in the FNS *Administrative Review Manual,* when conducting administrative reviews of the National School Lunch Program's Afterschool Snacks and Seamless Summer Option, the Fresh Fruit and Vegetable Program, and the Special Milk Program. The general areas of review must include, but are not limited to, the following:

(1) *Resource management.* The State agency must conduct an off-site assessment of the school food authority's nonprofit school food service to evaluate the risk of noncompliance with resource management requirements. If risk indicators show that the school food authority is at high risk for noncompliance with resource management requirements, the State agency must conduct a comprehensive review including, but not limited to, the following areas using procedures specified in the FNS *Administrative Review Manual.*

(i) *Maintenance of the nonprofit school food service account.* The State agency must confirm the school food authority's resource management is consistent with the maintenance of the nonprofit school food service account requirements in §§ 210.2, 210.14, 210.19(a), and 210.21.

(ii) *Paid lunch equity.* The State agency must review compliance with the requirements for pricing paid lunches in § 210.14(e).

(iii) *Revenue from nonprogram foods.* The State agency must ensure that all non-reimbursable foods sold by the school food service, including, but not limited to, a la carte food items, adult meals, and vended meals, generate at least the same proportion of school food authority revenues as they contribute to school food authority food costs, as required in § 210.14(f).

(iv) *Indirect costs.* The State agency must ensure that the school food authority follows fair and consistent methodologies to identify and allocate allowable indirect costs to school food service accounts, as required in 2 CFR part 200 and § 210.14(g).

(2) *General Program Compliance*—(i) *Free and reduced price process.* In the course of the review of each school food authority, the State agency must:

(A) Confirm the free and reduced price policy statement, as required in § 245.10 of this chapter, is implemented as approved.

(B) Ensure that the process used to verify children's eligibility for free and reduced price meals in a sample of household applications is consistent with the verification requirements, procedures, and deadlines established in § 245.6a of this chapter.

(C) Determine that, for each reviewed school, the meal count system does not overtly identify children eligible for free and reduced price meals, as required under § 245.8 of this chapter.

(D) Review at least 10 denied applications to evaluate whether the determining official correctly denied applicants for free and reduced price meals, and whether denied households were provided notification in accordance with § 245.6(c)(7)of this chapter.

(E) Confirm that a second review of applications has been conducted and that information has been correctly reported to the State agency as required in § 245.11, if applicable.

(ii) *Civil rights.* The State agency must examine the school food authority's compliance with the civil rights provisions specified in § 210.23(b) to ensure that no child is denied benefits or otherwise discriminated against in any of the programs reviewed under this section because of race, color, national origin, age, sex, or disability.

(iii) *School food authority on-site monitoring.* The State agency must ensure that the school food authority conducts on-site reviews of each school under its jurisdiction, as required by §§ 210.8(a)(1) and 220.11(d) of this chapter, and monitors claims and readily observable general areas of review in accordance with §§ 210.8(a)(2) and (a)(3), and 220.11(d) of this chapter.

(iv) *Competitive food standards.* The State agency must ensure that the local educational agency and school food authority comply with the nutrition standards for competitive foods in §§ 210.11 and 220.12 of this chapter, and retain documentation demonstrating compliance with the competitive food service and standards.

(v) *Water.* The State agency must ensure that water is available and accessible to children at no charge as specified in §§ 210.10(a)(1)(i) and 220.8(a)(1) of this chapter.

(vi) *Food safety.* The State agency must examine records to confirm that each school food authority under its jurisdiction meets the food safety requirements of § 210.13.

(vii) *Reporting and recordkeeping.* The State agency must determine that the school food authority submits reports and maintains records in accordance with program requirements in this part, and parts 220 and 245 of this chapter, and as specified in the FNS *Administrative Review Manual.*

(viii) *Program outreach.* The State agency must ensure the school food authority is conducting outreach activities to increase participation in the School Breakfast Program and the Summer Food Service Program, as required in § 210.12(d). If the State agency administering the Summer Food Service Program is not the same State agency that administers the National School Lunch Program, then the two State agencies must work together to implement outreach measures.

(ix) *Professional standards.* The State agency shall ensure the local educational agency and school food authority complies with the professional standards for school nutrition program directors, managers, and personnel established in § 210.30.

(x) *Local school wellness.* The State agency shall ensure the local educational agency complies with the local school wellness requirements set forth in § 210.30.

(i) *Entrance and exit conferences and notification*—(1) *Entrance conference.* The State agency may hold an entrance conference with the appropriate school food authority staff at the beginning of the on-site administrative review to discuss the results of any off-site assessments, the scope of the on-site review, and the number of schools to be reviewed.

(2) *Exit conference.* The State agency must hold an exit conference at the close of the administrative review and of any subsequent follow-up review to discuss the violations observed, the extent of the violations and a preliminary assessment of the actions needed to correct the violations. The State agency must discuss an appropriate deadline(s) for completion of corrective action, provided that the deadline(s) results in the completion of corrective action on a timely basis.

(3) *Notification.* The State agency must provide written notification of the review findings to the school food authority's Superintendent (or equivalent in a non-public school food authority) or authorized representative, preferably no later than 30 days after the exit conference for each review. The written notification must include the date(s) of review, date of the exit conference, review findings, the needed corrective actions, the deadlines for completion of the corrective action, and the potential fiscal action. As a part of the denial of all or a part of a Claim for Reimbursement or withholding payment in accordance with the provisions of this section, the State agency must provide the school food authority a written notice which details the grounds on which the denial of all or a part of the Claim for Reimbursement or withholding payment is based. This notice, must be provided by certified mail, or its equivalent, or sent electronically by email or facsimile. The notice must also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (*i.e.,* FNS or State agency) to which the appeal should be directed. The State agency must notify the school food authority, in writing, of the appeal procedures as specified in § 210.18(p) for appeals of State agency findings, and for appeals of FNS findings, provide a copy of § 210.29(d)(3) of the regulations.

(j) *Corrective action.* Corrective action is required for any violation under either the critical or general areas of the review. Corrective action must be applied to all schools in the school food authority, as appropriate, to ensure that deficient practices and procedures are revised system-wide. Corrective actions may include training, technical assistance, recalculation of data to ensure the accuracy of any claim that the school food authority is preparing at the time of the review, or other actions. Fiscal action must be taken in accordance with paragraph (l) of this section.

(1) *Extensions of the timeframes.* If the State agency determines that extraordinary circumstances make a school food authority unable to complete the required corrective action within the timeframes specified by the State agency, the State agency may extend the timeframes upon written request of the school food authority.

(2) *Documented corrective action.* Documented corrective action is required for any degree of violation of general or critical areas identified in an administrative review. Documented corrective action may be provided at the time of the review; however, it must be postmarked or submitted to the State agency electronically by email or facsimile, no later than 30 days from the deadline for completion of each required corrective action, as specified under paragraph (i)(2) of this section or as otherwise extended by the State agency under paragraph (j)(1) of this section. The State agency must maintain any documented corrective action on file for review by FNS.

(k) *Withholding payment.* At a minimum, the State agency must withhold all program payments to a school food authority as follows:

(1) *Cause for withholding.* (i) The State agency must withhold all Program payments to a school food authority if documented corrective action for critical area violations is not provided with the deadlines specified in paragraph (j)(2) of this section;

(ii) The State agency must withhold all Program payments to a school food authority if the State agency finds that corrective action for critical area violation was not completed;

(iii) The State agency may withhold Program payments to a school food authority at its discretion, if the State agency found a critical area violation on a previous review and the school food authority continues to have the same error for the same cause; and

(iv) For general area violations, the State agency may withhold Program payments to a school food authority at its discretion, if the State agency finds that documented corrective action is not provided within the deadlines specified in paragraph (j)(2) of this section, corrective action is not complete, or corrective action was not taken as specified in the documented corrective action.

(2) *Duration of withholding.* In all cases, Program payments must be withheld until such time as corrective action is completed, documented corrective action is received and deemed acceptable by the State agency, or the State agency completes a follow-up review and confirms that the problem has been corrected. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for all meals served in accordance with the provisions of this part during the period the payments were withheld. In very serious cases, the State agency will evaluate whether the degree of non-compliance warrants termination in accordance with § 210.25.

(3) *Exceptions.* The State agency may, at its discretion, reduce the amount required to be withheld from a school food authority pursuant to paragraph (k)(1)(i) through (iii) of this section by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. FNS may authorize a State agency to limit withholding of funds to an amount less than 40 percent of the

total Program payments, if FNS determines such action to be in the best interest of the Program.

(4) *Failure to withhold payments.* FNS may suspend or withhold Program payments, in whole or in part, to those State agencies failing to withhold Program payments in accordance with paragraph (k)(1) of this section and may withhold administrative funds in accordance with § 235.11(b) of this chapter. The withholding of Program payments will remain in effect until such time as the State agency documents compliance with paragraph (k)(1) of this section to FNS. Subsequent to the documentation of compliance, any withheld administrative funds will be released and payment will be released for any meals served in accordance with the provisions of this part during the period the payments were withheld.

(l) *Fiscal action.* The State agency must take fiscal action for all Performance Standard 1 violations and specific Performance Standard 2 violations identified during an administrative review as specified in this section. Fiscal action must be taken in accordance with the principles in § 210.19(c) and the procedures established in the FNS *Administrative Review Manual.* The State agency must follow the fiscal action formula prescribed by FNS to calculate the correct entitlement for a school food authority or a school. While there is no fiscal action required for general area violations, the State agency has the ability to withhold funds for repeat or egregious violations occurring in the majority of the general areas as described in paragraph (k)(1)(iv).

(1) *Performance Standard 1 violations.* A State agency is required to take fiscal action for Performance Standard 1 violations, in accordance with this paragraph and paragraph (l)(3).

(i) For certification and benefit issuance errors cited under paragraph (g)(1)(i) of this section, the total number of free and reduced price meals claimed must be adjusted to according to procedures established by FNS.

(ii) For meal counting and claiming errors cited under paragraph (g)(1)(ii) of this section, the State agency must apply fiscal action to the incorrect meal counts at the school food authority level, or only to the reviewed schools where violations were identified, as applicable.

(2) *Performance Standard 2 violations.* Except as noted in paragraphs (l)(2)(iii) and (l)(2)(iv) of this section, a State agency is required to apply fiscal action for Performance Standard 2 violations as follows:

(i) For missing food components or missing production records cited under paragraph (g)(2) of this section, the State agency must apply fiscal action.

(ii) For repeated violations involving milk type and vegetable subgroups cited under paragraph (g)(2) of this section, the State agency must apply fiscal action as follows:

(A) If an unallowable milk type is offered or there is no milk variety, any meals selected with the unallowable milk type or when there is no milk variety must also be disallowed/reclaimed; and

(B) If one vegetable subgroup is not offered over the course of the week reviewed, the reviewer should evaluate the cause(s) of the error to determine the appropriate fiscal action. All meals served in the deficient week may be disallowed/reclaimed.

(iii) For repeated violations involving food quantities and whole grain-rich foods cited under paragraph (g)(2) of this section, the State agency has discretion to apply fiscal action as follows:

(A) If the meals contain insufficient quantities of the required food components, the affected meals may be disallowed/reclaimed;

(B) If no whole grain-rich foods are offered during the week of review, meals for the entire week of review may be disallowed and/or reclaimed;

(C) If insufficient whole grain-rich foods are offered during the week of review, meals for one or more days during the week of review may be disallowed/reclaimed.

(D) If a weekly vegetable subgroup is offered in insufficient quantity to meet the weekly vegetable subgroup requirement, meals for one day of the week of review may be disallowed/reclaimed; and

(E) If the amount of juice offered exceeds the weekly limitation, meals for the entire week of review may be disallowed/reclaimed.

(iv) For repeated violations of calorie, saturated fat, sodium, and trans fat dietary specifications cited under paragraph (g)(2)(ii) of this section, the State agency has discretion to apply fiscal action to the reviewed school as follows:

(A) If the average meal offered over the course of the week of review does not meet one of the dietary specifications, meals for the entire week of review may be disallowed/reclaimed; and

(B) Fiscal action is limited to the school selected for the targeted menu review and must be supported by a nutrient analysis of the meals at issue using USDA-approved software.

(v) The following conditions must be met prior to applying fiscal action as described in paragraphs (l)(2)(ii) through (iv) of this section:

(A) Technical assistance has been given by the State agency;

(B) Corrective action has been previously required and monitored by the State agency; and

(C) The school food authority remains noncompliant with the meal requirements established in part 210 and part 220 of this chapter.

(3) *Duration of fiscal action.* Fiscal action must be extended back to the beginning of the school year or that point in time during the current school year when the infraction first occurred for all violations of Performance Standard 1 and specific violations of Performance Standard 2. Based on the severity and longevity of the problem, the State agency may extend fiscal action back to previous school years. If corrective action occurs, the State agency may limit the duration of fiscal action for Performance Standard 1 and Performance Standard 2 violations as follows:

(i) *Performance Standard 1 certification and benefit issuance violations.* The total number of free and reduced price meals claimed for the review period and the month of the on-site review must be adjusted to reflect the State calculated certification and benefit issuance adjustment factors.

(ii) *Other Performance Standard 1 and Performance Standard 2 violations.* With the exception of violations described in paragraph (l)(3)(i) of this section, a State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors.

(A) If corrective action occurs during the on-site review month or after, the State agency would be required to apply fiscal action from the point corrective action occurs back through the beginning of the on-site review month, *and* for the review period;

(B) If corrective action occurs during the review period, the State agency would be required to apply fiscal action from the point corrective action occurs back through the beginning of the review period;

(C) If corrective action occurs prior to the review period, no fiscal action would be required; and

(D) If corrective action occurs in a claim month between the review period and the on-site review month, the State agency would apply fiscal action only to the review period.

(4) *Performance-based cash assistance.* In addition to fiscal action described in paragraphs (l)(2)(i) through

(v) of this section, school food authorities found to be out of compliance with the meal patterns or nutrition standards set forth in § 210.10 may not earn performance-based cash assistance authorized under § 210.4(b)(1) unless immediate corrective action occurs. School food authorities will not be eligible for the performance-based reimbursement beginning the month immediately following the administrative review and, at State discretion, for the month of review. Performance-based cash assistance may resume beginning in the first full month the school food authority demonstrates to the satisfaction of the State agency that corrective action has taken place.

(m) *Transparency requirement.* The most recent administrative review final results must be easily available to the public.

(1) The State agency must post a summary of the most recent results for each school food authority on the State agency's public Web site, and make a copy of the final administrative review report available to the public upon request. A State agency may also strongly encourage each school food authority to post a summary of the most recent results on its public Web site, and make a copy of the final administrative review report available to the public upon request.

(2) The summary must cover meal access and reimbursement, meal patterns and nutritional quality of school meals, school nutrition environment (including food safety, local school wellness policy, and competitive foods), civil rights, and program participation.

(3) The summary must be posted no later than 30 days after the State agency provides the results of administrative review to the school food authority.

(n) *Reporting requirement.* Each State agency must report to FNS the results of the administrative reviews by March 1 of each school year on a form designated by FNS. In such annual reports, the State agency must include the results of all administrative reviews conducted in the preceding school year.

(o) *Recordkeeping.* Each State agency must keep records which document the details of all reviews and demonstrate the degree of compliance with the critical and general areas of review. Records must be retained as specified in § 210.23(c) and include documented corrective action, and documentation of withholding of payments and fiscal action, including recoveries made. Additionally, the State agency must have on file:

(1) Criteria for selecting schools for administrative reviews in accordance with paragraphs (e)(2)(ii) and (i)(2)(ii) of this section.

(2) Documentation demonstrating compliance with the statistical sampling requirements in accordance with paragraph (g)(1)(i) of this section, if applicable.

(p) *School food authority appeal of State agency findings.* Except for FNS-conducted reviews authorized under § 210.29(d)(2), each State agency shall establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement or withholding payment arising from administrative review activity conducted by the State agency under § 210.18. State agencies may use their own appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: Appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the time, date, place and procedures of the hearing. If the State agency has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) The written request for a review shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding of payment, and the State agency shall acknowledge the receipt of the request for appeal within 10 calendar days;

(2) The appellant may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(3) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, or its equivalent, or sent electronically by email or facsimile, of the time, date and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on program regulations;

(7) Within 60 calendar days of the State agency's receipt of the request for review, by written notice, sent by certified mail, or its equivalent, or electronically by email or facsimile, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process; and

(9) The determination by the State review official is the final administrative determination to be afforded to the appellant.

(q) *FNS review activity.* The term "State agency" and all the provisions specified in paragraphs (a) through (h) of this section refer to FNS when FNS conducts administrative reviews in accordance with § 210.29(d)(2). FNS will notify the State agency of the review findings and the need for corrective action and fiscal action. The State agency shall pursue any needed follow-up activity.

■ 10. In § 210.19:

■ a. In the seventh sentence of paragraph (a)(1), add the words "in a manner that is consistent with the paid lunch equity provision in § 210.14(e) and corresponding FNS guidance," after the word "lunches,";

■ b. Revise paragraph (a)(2);

■ c. In the fifth sentence of paragraph (a)(5), remove the words "an on-site" and the number "5" and add in their place the word "a" and the number "3", respectively.

■ d. Remove the sixth sentence of paragraph (a)(5);

■ e. In the second sentence of paragraph (c) introductory text, remove the words "the meal" and add the phrase ", 215," after the number "210";

■ f. In the second sentence of paragraph (c)(1), add ", 215," after "210";

■ g. In the second sentence of paragraph (c)(2)(i), remove the word "lunches" and add in its place the word "meals" and remove the word "lunch" from the third sentence and add in its place the word "meal";

■ h. Remove the fourth sentence of (c)(2)(i);

■ i. In the first sentence of paragraph (c)(2)(ii), remove the reference "§ 210.18(m)" and add in its place the reference "§ 210.18(l)" and in the last sentence of paragraph (c)(2)(ii), remove the word "lunches" and add in its place the word "meals";

■ j. In paragraph (c)(2)(iii), remove the words "lunches" and "lunch" and add in their place the words "meals" and "meal", respectively; and

■ m. Remove paragraph (g).

The revision reads as follows:

§ 210.19 Additional responsibilities.

(a) * * *

(2) *Improved management practices.* The State agency must work with the school food authority toward improving the school food authority's management practices where the State agency has found poor food service management practices leading to decreasing or low child participation, menu acceptance, or program efficiency. The State agency should provide training and technical assistance to the school food authority or direct the school food authority to places to obtain such resources, such as the Institute of Child Nutrition.

* * * * *

§ 210.20 [Amended]

■ 11. In § 210.20:

■ a. Remove paragraph (a)(5) and redesignate paragraphs (a)(6) through (10) as paragraphs (a)(5) through (9); and

■ b. Remove paragraph (b)(7) and redesignate paragraphs (b)(8) through (15) as paragraphs (b)(7) through (14).

§ 210.23 [Amended]

■ 12. In § 210.23, remove paragraph (d) and redesignate paragraph (e) as paragraph (d).

§ 210.29 [Amended]

■ 13. In § 210.29:

■ a. In paragraph (b), remove the words "or § 210.18a" and "reviews and";

■ b. In paragraph (d)(1), remove the words "and/or any follow-up review" from the first sentence; and

■ c. In paragraph (d)(2), remove the words "or follow-up reviews".

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 14. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C.1772 and 1779.

§ 215.11 [Amended]

■ 15. In § 215.11:

■ a. In the second sentence of paragraph (b)(2), revise "§ 210.18(i)" to read "§ 210.18"; and

■ b. Revise the third sentence of paragraph (b)(2) to read as follows:

§ 215.11 Special responsibilities of State agencies.

* * * * *

(b) * * *

(2) * * * Compliance reviews of participating schools shall focus on the reviewed school's compliance with the required certification, counting, claiming, and milk service procedures. * * *

* * * * *

■ 16. Revise § 215.18 to read as follows:

§ 215.18 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
215.3(d)	0584–0067
215.5(a)	0584–0005
215.7	0584–0005
215.10(a), (b), (d)	0584–0005
215.11(c)(1)	0584–0005
215.11(c)(2)	0584–0594
215.12(d)	0584–0005
215.13a	0584–0026
215.14a	0584–0005

PART 220—SCHOOL BREAKFAST PROGRAM

■ 17. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 18. In § 220.8:

■ a. In paragraph (h)(1), remove the phrase "Effective July 1, 2013 (SY 2013–2014), as part of the administrative review authorized under § 210.18 of this chapter, State agencies must conduct a weighted nutrient analysis for the school(s) selected for review" from the first sentence, and add in its place the phrase "When required by the administrative review process set forth in § 210.18, the State agency must conduct a weighted nutrient analysis"; and

■ b. Revise paragraphs (i) and (j).

The revisions read as follows:

§ 220.8 Meal requirements for breakfasts.

* * * * *

(i) *Nutrient analyses of school meals.* Any nutrient analysis of school breakfasts conducted under the administrative review process set forth in § 210.18 of this chapter must be performed in accordance with the procedures established in § 210.10(i) of this chapter. The purpose of the nutrient analysis is to determine the average levels of calories, saturated fat, and sodium in the breakfasts offered to each age grade group over a school week.

(j) *Responsibility for monitoring meal requirements.* Compliance with the applicable breakfast requirements in paragraph (b) of this section, including the dietary specifications for calories, saturated fat, sodium and trans fat, and paragraphs (o) and (p) of this section will be monitored by the State agency through administrative reviews authorized in § 210.18 of this chapter.

* * * * *

■ 19. In § 220.11, add paragraph (d) to read as follows:

§ 220.11 Reimbursement procedures.

* * * * *

(d) The school food authority shall establish internal controls which ensure the accuracy of breakfast counts prior to the submission of the monthly Claim for Reimbursement. At a minimum, these internal controls shall include: an on-site review of the breakfast counting and claiming system employed by each school within the jurisdiction of the school food authority; comparisons of daily free, reduced price and paid breakfast counts against data which will assist in the identification of breakfast counts in excess of the number of free, reduced price and paid breakfasts served each day to children eligible for such breakfasts; and a system for following up on those breakfast counts which suggest the likelihood of breakfast counting problems.

(1) *On-site reviews.* Every school year, each school food authority with more than one school shall perform no less than one on-site review of the breakfast counting and claiming system and the readily observable general areas of review identified under § 210.18(h) of this chapter, as specified by FNS, for a minimum of 50 percent of schools under its jurisdiction with every school

within the jurisdiction being reviewed at least once every two years. The on-site review shall take place prior to February 1 of each school year. Further, if the review discloses problems with a school's meal counting or claiming procedures or general review areas, the school food authority shall ensure that the school implements corrective action, and within 45 days of the review, conduct a follow-up on-site review to determine that the corrective action resolved the problems. Each on-site review shall ensure that the school's claim is based on the counting system and that the counting system, as implemented, yields the actual number of reimbursable free, reduced price and paid breakfasts, respectively, served for each day of operation.

(2) *School food authority claims review process.* Prior to the submission of a monthly Claim for Reimbursement, each school food authority shall review the breakfast count data for each school under its jurisdiction to ensure the accuracy of the monthly Claim for Reimbursement. The objective of this review is to ensure that monthly claims include only the number of free, reduced price and paid breakfasts served on any day of operation to children currently eligible for such breakfasts.

* * * * *

■ 20. In § 220.13:

■ a. In the sixth sentence of paragraph (b)(2), remove "SF–269" and add in its place "FNS–777";

■ b. Revise paragraphs (f)(2) through (4);

■ c. Revise paragraph (g); and

■ d. Amend paragraph (j) by removing the words "supervisory assistance" and adding in their place the word "administrative" in the first sentence.

The revisions read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(f) * * *

(2) State agencies must conduct administrative reviews of the school meal programs specified in § 210.18 of this chapter to ensure that schools participating in the designated programs comply with the provisions of this title. The reviews of selected schools must focus on compliance with the critical and general areas of review identified in § 210.18 for each program, as applicable, and must be conducted as specified in the FNS *Administrative Review Manual* for each program. School food authorities may appeal a denial of all or a part of the Claim for Reimbursement or withholding of payment arising from review activity conducted by the State agency under § 210.18 of this chapter or by FNS under § 210.29(d)(2) of this chapter. Any such appeal shall be subject to the procedures set forth under § 210.18(p) of this chapter or § 210.29(d)(3) of this chapter, as appropriate.

(3) For the purposes of compliance with the meal requirements in §§ 220.8 and 220.23, the State agency must follow the provisions specified in § 210.18(g) of this chapter, as applicable.

(4) State agency assistance must include visits to participating schools selected for administrative reviews under § 210.18 of this chapter to ensure compliance with program regulations and with the Department's nondiscrimination regulations (part 15 of this title), issued under title VI, of the Civil Rights Act of 1964.

* * * * *

(g) State agencies shall adequately safeguard all assets and monitor resource management as required under § 210.18 of this chapter, and in conformance with the procedures specified in the FNS *Administrative Review Manual,* to assure that assets are used solely for authorized purposes.

* * * * *

§ 220.14 [Amended]

■ 21. In paragraph (h), add the words "food authority" after the word "school" and remove the words "§ 220.8(g), § 220.8(i)(2) and (i)(3), whichever is applicable" and add in their place the words "§ 220.8 of this part".

■ 22. Revise § 220.22 to read as follows:

§ 220.22 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
220.3(e)	0584–0067
220.7(a),(d), (e)	0584–0012
220.8(a)(3), (o)	0584–0012
220.9(a)	0584–0012
220.11 (a)–(b)	0584–0012
220.13 (a–1), (b), (c), (e), (f)	0584–0012 0584–0594
220.14(d)	0584–0012
220.15	0584–0012

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

■ 23. The authority citation for part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

■ 24. In § 235.2, add in alphabetical order a definition for "Large school food authority" to read as follows:

§ 235.2 Definitions.

* * * * *

Large school food authority means, in any State:

(1) All school food authorities that participate in the National School Lunch Program (7 CFR part 210) and have enrollments of 40,000 children or more each; or

(2) If there are less than two school food authorities with enrollments of 40,000 or more, the two largest school food authorities that participate in the National School Lunch Program (7 CFR part 210) and have enrollments of 2,000 children or more each.

* * * * *

Dated: June 13, 2016.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2016–17231 Filed 7–28–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

[FNS–2011–0027]

RIN 0584–AE16

National School Lunch Program and School Breakfast Program: Eliminating Applications Through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes requirements for State agencies, local educational agencies, and schools operating the Community Eligibility Provision, a reimbursement option that allows the service of school meals to all children at no-cost in high poverty schools without collecting household applications. By eliminating the household application process and streamlining meal counting and claiming procedures through the Community Eligibility Provision, local educational agencies may substantially reduce administrative burden related to operating the National School Lunch and School Breakfast Programs. This rule codifies many requirements that were implemented through policy guidance following enactment of the Healthy, Hunger-Free Kids Act of 2010, as well as provisions of the proposed rule. These requirements will result in consistent, national implementation of the Community Eligibility Provision.

DATES: This rule is effective August 29, 2016. Compliance with the provisions of this rule must begin August 29, 2016.

FOR FURTHER INFORMATION CONTACT: Tina Namian, School Programs Branch, Policy and Program Development Division, Food and Nutrition Service, at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

The Healthy, Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111–296, required significant changes in the Child Nutrition Programs to reduce childhood obesity, increase eligible children's access to school nutrition benefits, and improve program integrity. Notably, HHFKA mandated the most substantial update to the nutritional requirements of the school meal programs in more than 30 years, increasing the amount of fruits, vegetables, and whole grain-rich foods served, and limiting sodium and *trans* fats. HHFKA also required USDA to establish hiring and training standards for school food service professionals and, for the first time, set nutritional standards for snacks sold to students throughout the school day.

Section 104 of the HHFKA amended section 11(a)(1) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1759a(a)(1)) by adding paragraph (F), "Universal Meal Service in High Poverty Areas." This provision resulted in the creation of the Community Eligibility Provision (CEP), a reimbursement alternative for eligible, high-poverty local educational agencies (LEAs) and schools participating in both the National School Lunch Program (NSLP) and School Breakfast Program (SBP). CEP aims to combat child hunger in high poverty areas, while reducing administrative burden and increasing program efficiency by using current, readily available data to offer school meals to all students at no cost.

The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) published a proposed rule in the **Federal Register** (78 FR 65890) on November 4, 2013, seeking to amend the regulations governing the determination of eligibility for free and reduced price meals and free milk in schools (7 CFR 245) consistent with amendments made to the NSLA by the HHFKA. FNS drew on a range of information to develop the proposed rule, including the statutory language in the NSLA and knowledge gained through the phased-in implementation of CEP in pilot States (school years (SYs) 2011–12 through 2013–14).

The proposed rule sought to establish the following:

- Limit eligibility for CEP to those LEAs and schools that have an identified student percentage (ISP) of at least 40 percent based on data as of April 1 of the school year preceding CEP election. The term "identified students" refers to students directly certified for free school meals based on their participation in other means-tested assistance programs, such as the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), or the Food Distribution Program on Indian Reservations (FDPIR). Identified students also are those who are categorically eligible for free school meals without an application, and not subject to verification, including:
    - Homeless children as defined under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2));
    - Runaway and homeless youth served by programs established under the Runaway and Homeless Youth Act (42 U.S.C. 5701);
    - Migrant children as defined under section 1309 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6399);
    - Foster children certified through means other than a household application;
    - Children enrolled in a Federally-funded Head Start Program or a comparable State-funded Head Start Program or pre-kindergarten program;
    - Children enrolled in an Even Start Program; and
    - Non-applicant students approved by local education officials, such as a principal, based on available information.
- Require LEAs opting to elect CEP for the following school year to submit (by June 30) to the State agency documentation to support the ISP.
- Require participating schools to offer breakfasts and lunches at no cost to all students, and count the number of reimbursable breakfasts and lunches served to students daily.
- Prohibit LEAs from collecting free and reduced price meal applications on behalf of children in CEP schools.
- Establish procedures to determine the percentages of meals to be claimed at the free and paid rates at CEP schools.
- Require LEAs to pay, with non-Federal funds, the difference (if any) between the cost of serving meals at no cost to all students and the Federal reimbursement.
- Specify that participating LEAs and schools that are still eligible for CEP at the end of the 4-year cycle may, with the State agency's concurrence, immediately start a new 4-year cycle in the next school year using ISP data as of the most recent April 1 (year 4 of the current cycle). Alternatively, participating LEAs and schools in year 4 of a CEP cycle with an ISP below 40 percent, but at least 30 percent, may continue to operate CEP for a "grace year."
- Require State agencies to notify LEAs of district-wide eligibility status by April 15 annually and to provide guidance and information to eligible LEAs on how to elect CEP.
- Require LEAs to submit school-level eligibility information to the State agency annually by April 15.
- Require State agencies to publish lists of eligible LEAs and schools on a public Web site and submit the link to FNS annually by May 1.
- Clarify that the ISP multiplied by 1.6 may be used for CEP schools in lieu of the free or free and reduced-price percentage when this data is used to determine eligibility for other Child Nutrition Programs (*e.g.*, Fresh Fruit and Vegetable Program, Child and Adult Care Food Program, Summer Food Service Program, NSLP Afterschool Snacks, and NSLP Seamless Summer Option).
- Require participating LEAs and schools to retain documentation and records (*e.g.*, direct certification lists) used for the ISP calculation.
- Specify that LEAs and schools operating CEP may stop operating CEP and return to standard certification and counting and claiming procedures at any time during the school year or for the following school year.
- Require that students receiving meals at a school using special assistance certification and reimbursement alternatives under 7 CFR 245.9 (hereafter referred to as Provision schools) continue to receive reimbursable meals at no charge for up to 10 operating days when they transfer to a school using standard counting and claiming procedures (hereafter referred to as non-Provision schools) in the same LEA during the school year. For student transfers involving different LEAs, the receiving LEA would have discretion to provide such students free meals for up to 10 operating days.

Prior to national implementation in SY 2014–15, CEP was gradually phased in over a three-year period. Prior to each school year of the phase-in, FNS solicited applications from State agencies that were interested in CEP early implementation and made selections based on State and local support, eligibility of schools within the State, and the State's overall level of readiness for CEP. In SY 2011–12, Illinois, Kentucky, and Michigan became the first three States: 665 schools participated in the initial year of CEP implementation. For SY 2012–13, New York, Ohio, West Virginia, and the District of Columbia joined the three initial States, making CEP available in a total of six States and the District of Columbia. In SY 2013–14, the final year of the phase-in, CEP was expanded to Florida, Georgia, Maryland, and Massachusetts. By the end of the pilot phase, CEP was operating in more than 4,000 schools and serving more than 1.5 million students in 10 States and the District of Columbia.

Throughout the CEP phase-in period, FNS provided technical assistance through a webinar series and monthly conference calls with State agencies. FNS also presented information about CEP at an array of national conferences and received feedback from key stakeholders, including State child nutrition directors, school food service staff, the Council of Great City Schools, and several professional organizations, including the National Association of State Title I Directors, the Council of Chief State School Officers, the National Association of Federal Education Program Administrators, the National Parent Teacher Association, the National School Boards Association, and the National Association of Elementary School Principals.

During the phase-in, FNS also conducted a formal program evaluation of CEP. This evaluation and addendum (published in February 2014 and January 2015, respectively) assessed the experiences and performance of the pilot States, and included an implementation analysis and an impact analysis. Specifically, the evaluation study sought to identify and assess the attractiveness of CEP to LEAs, possible barriers for LEAs that might discourage their adoption of CEP, operational issues that LEAs encountered in administering CEP, and the overall impact of CEP in participating LEAs. The evaluation study found positive outcomes for CEP schools, providing further credibility to many anecdotal narratives collected by FNS from State and local officials that were overwhelmingly supportive of CEP. In addition to demonstrating high CEP uptake and popularity among eligible LEAs, the study indicated that CEP schools experienced significant participation growth in their school meal programs. On average, CEP schools saw a 5 percent increase in their NSLP participation rate, and a 9 percent increase in their SBP participation rate. This finding confirmed that CEP was achieving its primary objective to expand access to school meals for low income students. Furthermore, the study found that the first seven pilot States experienced sustained, rapid second year growth in the number of eligible districts participating in CEP. Lastly, the study results demonstrated that CEP was consistently achieving a second objective: Reducing administrative burden and improving the efficiency of school meal program operations. Among the related findings, CEP was shown, on average, to:

- Result in net increases or have no adverse effect on school food service revenues,
- reduce the overall rate of certification errors, and
- generate time savings for LEA foodservice administrative staff, school food service workers, and school administrators.

The evaluation study also identified potential barriers. States expressed a desire for more time to make election decisions. States and LEAs also expressed concerns regarding the loss of free and reduced price meal application data as a measure of socioeconomic status and the impact that loss could have on other programs and funding streams. Because CEP is a novel way of operating the school meal programs, States and LEAs were also concerned about the financial impact of CEP in general. As a result, FNS developed extensive guidance and technical assistance tools, such as reimbursement calculators, and worked closely with other agencies administering programs that have traditionally relied on household application data (*e.g.,* Title I, E-Rate) to produce timely joint guidance and facilitate CEP implementation.

Overall, the evaluation study indicated that CEP was working well and fulfilling its promised benefits in the pilot States and LEAs. CEP was demonstrated to have a clear and positive impact on participation and school food service administration, and participating LEAs were highly satisfied with the provision and likely to continue participating in CEP.

In SY 2014–15, CEP's first year of nationwide availability, State and local officials in all parts of the country enthusiastically embraced the new provision, resulting in explosive participation growth. As of September 2014, almost 14,000 schools in more than 2,000 school districts located in 49 States and the District of Columbia were participating in CEP. Together, these schools were offering free meals to about 6.4 million students daily. Significantly, these data indicated that a broad range of LEAs were choosing to elect CEP. About two thirds of the 75 largest highly eligible school districts identified by FNS elected CEP for at least some of their schools in SY 2014–15. Conversely, about half of electing LEAs had enrollments of 500 or less. These figures indicated that CEP was working for schools and districts of all sizes and characteristics. During this time, FNS continued to provide extensive guidance and technical assistance through conference calls, public speaking appearances, webinars, guidance publications, in-person visits, collaboration with partner organizations, and focused contact with States and LEAs.

Building on the successes of the previous school year, CEP participation continued to grow in SY 2015–16. In the second year of nationwide implementation, more than 18,000 schools in almost 3,000 school districts elected CEP. Participating schools are located in all 50 States, the District of Columbia, and Guam, and are serving healthy school meals to more than 8.5 million children daily, ensuring that students in high poverty communities can enter the classroom well-nourished and ready to learn.

Furthermore, because of its widespread popularity and strong success record, CEP has already increased access to nutritious school meals for millions of low income children, while simultaneously reducing administrative burden for local school food service operators across the country.

II. Public Comments and FNS Response

The proposed rule aimed to increase access to school meals in high-poverty areas, reduce administrative burden, and increase operational efficiency by using readily available and current data to offer meals to all students at no-cost through implementation of CEP. The rule was posted for comment and the public had the opportunity to submit comments on the proposal during a 60-day period that ended January 3, 2014. FNS received 78 public comments, 71 of which were germane. Commenters included State educational agencies, child nutrition advocates, food banks and anti-hunger groups, local school districts, school food service managers, community groups, charter schools, law students, K–12 students, and interested individuals. To view all public comments on the proposed rule, visit *www.regulations.gov* and search for public submissions under docket number FNS–2011–0027. FNS greatly appreciates the valuable comments provided. These comments were essential in developing a final rule that is expected to expand access to healthy school meals for students in high poverty communities, and streamline requirements for Program operators.

Overall, commenters were generally more supportive of the proposed rule than opposed. Sixty-five public comments, including a form letter submitted by 29 program operators and advocates, supported the proposal. Three submissions were neutral, and three expressed general opposition without commenting on specific proposed provisions. Neutral commenters were not clearly in favor of, or opposed to, the proposal but requested clarification on specific provisions.

Commenters supporting the rule recognized the correlation between access to healthy school meals and academic success. Many commenters noted that the rule reduces the stigma sometimes associated with eating school meals, thereby increasing the likelihood that students will participate in the meal programs and benefit from the nutritious meals offered at school. Additionally, commenters noted that providing meals at no-cost also increases meal participation and enhances child nutrition. Combined with recent updates to the school meal pattern, increased participation means that high-need students have more opportunities to consume fruits, vegetables, and whole grain-rich foods. Commenters also praised CEP's reduction of administrative burden: Specifically, the use of readily available data from other assistance programs to determine eligibility in lieu of household applications, eliminating the need for low-income households to complete paperwork, and the streamlined counting and claiming for program operators. Additionally, many commenters suggested ways to strengthen the proposed rule, citing CEP's role in expanding access for children whose only reliable source of nutrition may be school meals.

While most commenters generally agreed with the provisions of the proposed rule, commenters also expressed concerns regarding the impact that CEP might have on the financial integrity of the school meal programs. Commenters noted that CEP could cause financial distress to school districts and schools in cases where Federal reimbursements were unable to meet program costs due to lower than expected savings or revenues. An education advocacy group also noted that CEP may have an unintended, unequal impact on private schools that may have limited resources. However, CEP remains an option for private, nonprofit schools and, like all schools, the financial viability of participation in the program must be evaluated based on the circumstances of the individual school.

FNS carefully considered the views expressed by commenters, especially those responsible for the oversight and day-to-day operations of the school meal programs. At the same time, FNS is mindful that CEP is uniquely positioned to both increase food security among vulnerable children and reduce program operators' administrative burden. Therefore, this final rule includes several amendments to the provisions of the proposed rule based on public comments. The goal of the rule remains expansion of children's access to school meals and streamlining Program operations.

The following is a summary of the key public comments, focused on the most frequent comments and those that contributed toward USDA revisions to the provisions of the proposed rule.

Terms

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(1) would establish terms and definitions as they relate to CEP. This paragraph identified the LEA as the administrative body that may be eligible for and elect CEP. The proposed rule would not make any change to the definitions of "local educational agency" or "school," which apply broadly to the school meal programs and for which definitions were previously established at 7 CFR 245.2 and 210.2, respectively. The proposed rule would further remove the words "school food authority" wherever they appear in § 245.9 and replace them with the words "local educational agency."

Comments: Two commenters were confused by the use of the terms LEA, school food authority (SFA), and school and the responsibilities of each with regard to CEP. Commenters suggested that FNS develop one term in all program regulations to define the legal entity responsible for meeting all program requirements.

FNS Response: The terms *local educational agency, school food authority,* and *school* are codified and apply broadly to local program operators. Section 11(a)(1)(F) of the NSLA, 42 U.S.C. 1759a(a)(1)(F), as amended by Section 104 of HHFKA, uses the term "LEA" in connection with CEP; therefore, the CEP proposed and final rules are consistent with the NSLA. For consistency among the special assistance certification and reimbursement alternatives, the final rule uses the term "LEA" in § 245.9 with regard to CEP and Provisions 1, 2, and 3. LEAs are broader entities in a school district that typically perform SFA functions, in addition to those unrelated to administration of the Child Nutrition Programs. This editorial change, made for internal consistency and agreement with the NSLA, does not indicate a change in the regulatory requirements for the Provisions 1, 2 and 3, nor how these special assistance provisions are monitored.

Accordingly, this final rule replaces the term "school food authority" with the term "local educational agency" throughout § 245.9.

Grouping

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(1)(iii) would permit the ISP to be determined by an individual participating school, a group of participating schools in the LEA, or in the aggregate for the entire LEA if all schools participate. The proposed rule at 7 CFR 245.9(f)(3)(i) would establish a minimum ISP of 40 percent as of April 1 of the school year prior to participating in CEP, though does not detail specific requirements based on how schools are grouped.

Comments: Thirty-three commenters recommended clarifying how LEAs may group schools. Specifically, the commenters recommended incorporating into the regulatory language the policy of allowing groups within an LEA to be formed based on any criteria, and explaining that individual schools within the group may have less than 40 percent identified students, as long as the group meets the minimum 40 percent ISP and other criteria.

Two commenters recommended adding guidance for LEAs on how to manage groups of schools. For example, commenters suggested that FNS develop guidance for CEP schools that consolidate with non-CEP schools (*e.g.,* CEP schools that take in students from non-CEP schools that are closing) and for situations in which some schools are removed from a CEP group during the school year.

One commenter stated that it is not advantageous for schools with a higher ISP to be grouped with schools with a lower ISP. Another commenter suggested giving LEAs discretion to use an average claiming percentage for schools in a CEP group.

FNS Response: FNS appreciates that grouping is a flexible characteristic of CEP that may be used to maximize Federal reimbursements and administrative efficiencies. As such, school grouping under CEP represents a strategic decision for some LEAs. Because Federal reimbursements are made at the LEA level, rather than at the individual school level, the final rule provides LEAs flexibility to group schools to maximize benefits, based on the unique characteristics of each LEA.

To facilitate the use of grouping, and in response to requests from several commenters, FNS has provided extensive technical assistance on grouping through multiple guidance documents. These include the CEP Planning and Implementation Guidance and SP 19–2016, Community Eligibility Provision: Guidance and Updated Q&As (*both* available at: *http://www.fns.usda.gov/school-meals/community-eligibility-provision-resource-center*). These resources respond to several real and hypothetical grouping scenarios posed by State agencies and LEAs.

Accordingly, this final rule retains in § 245.9(f)(3) the requirement for a school or group of schools in an LEA to have a minimum ISP of 40 percent to elect CEP for a 4-year cycle. In response to comments, FNS also added language § 245.9(f)(3)(i) to clarify that LEAs have discretion in how to group schools to optimize CEP benefits and operational ease. This includes explaining that individual schools in a CEP group may have an ISP less than 40 percent, as long as the ISP of the group is at least 40 percent.

Eligibility Criteria

Minimum Identified Student Percentage

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(3)(i) would require an LEA, group of schools, or individual school electing CEP to have an ISP of at least 40 percent, as of April 1 of the school year prior to participating in CEP, unless otherwise specified by FNS.

Comments: FNS received 37 comments requesting greater flexibility to determine the timing of the ISP. Some commenters requested that the ISP be established ‘‘on or before’’ rather than ‘‘as of’’ April 1. Three additional individual commenters suggested that the rule should be expanded to provide meals at no cost to all children in all schools, instead of only schools that have an ISP of at least 40 percent.

FNS Response: The final rule maintains the requirement for the ISP to be generated using data as of April 1 in the school year preceding CEP implementation, as well as the requirement for the ISP used by an individual school, group of schools, or entire school district to be at least 40 percent. The April 1 date is a statutory requirement in section 11(a)(1)(F)(iii) and (iv) of the NSLA, 42 U.S.C. 1759a(a)(1)(F)(iii) and (iv), and must be maintained in this final rule.

The requirement to ensure that all data is reflective of April 1 is intended to accurately capture the composition of the student population to form the basis of the reimbursement rate the LEA, group of schools, or school may receive throughout the 4-year CEP cycle. Using the phrase ‘‘as of’’ ensures that identified student data generally reflects April 1, but also can accommodate variation in State direct certification systems. This allows States to use the best available data that reflects April 1, without creating additional administrative burden. For example, if a State conducts direct certification monthly on the fifth day of each month, the term ‘‘as of’’ allows the State to use data from April 5 to generate the ISP, rather than March 5. The suggested phrase ‘‘on or before’’ is more restrictive because it would not permit a State to use data from April 5, if that is when the State usually conducts direct certification. It also would permit *any* data drawn prior to April 1 to be used, which may not accurately reflect the student population as well as data drawn later in the school year. The ISP is the basis for the Federal reimbursement for an entire 4-year CEP cycle, so it is important that the ISP accurately reflects the student population in participating schools.

Although the statute permits FNS to employ a threshold of less than 40 percent in section 11(a)(1)(F)(viii) of the NSLA, the 40 percent ISP threshold for CEP eligibility is intended to best ensure that participating schools are able to maintain the financial integrity of their school meal programs. CEP is specifically designed to improve access to the school meal programs for students in high poverty schools, where hunger may be a barrier to academic achievement. As such, CEP is most financially viable at schools with an ISP of at least 40 percent because these schools are better able to maximize Federal reimbursements through a high claiming percentage. It is important to note that through grouping, LEAs still have discretion to include schools with ISPs lower than 40 percent as long as the group's aggregate ISP meets the 40 percent threshold.

Accordingly, this final rule retains in § 245.9(f)(3) the requirement to have an ISP of at least 40 percent as of April 1.

Breakfast and Lunch Participation

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(3)(ii) would require an LEA or school to participate in both the NSLP and SBP to elect CEP.

Comments: One commenter requested clarity about the requirement for CEP schools to serve both breakfast and lunch, and asked whether an LEA that currently offers only lunch may elect CEP if the LEA plans to offer breakfast after CEP election. Another commenter recommended that FNS exempt charter schools and alternative schools from the requirement to offer both breakfast and lunch.

FNS Response: The NSLA, in section 11(a)(1)(F)(ii)(I)(aa), requires that LEAs and schools participating in CEP must participate in both the NSLP and SBP. LEAs and schools that participate in only one Program—either the NSLP or SBP—may elect CEP for the next school year if an agreement is established with the State agency to operate both Programs by the time CEP is implemented. Because participation in both the NSLP and SBP is required by statute, this final rule does not exempt charter or alternative schools from the requirement to offer both breakfast and lunch. However, schools that operate on a limited schedule (*e.g.*, half-day kindergarten buildings) where it is not operationally feasible to offer both lunch and breakfast may elect CEP with FNS approval.

Accordingly, the final rule retains in § 245.9(f) the requirement to offer breakfasts and lunches at no cost to students under CEP.

Community Eligibility Provision Procedures

Election Deadline

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(4)(i) would require that LEAs intending to elect CEP for the following school year must submit to the State agency no later than June 30 documentation demonstrating that the LEA, school, or group(s) of schools meet(s) all eligibility requirements.

Comments: Two commenters recommended that schools be permitted to enroll in CEP at any time prior to the start of the applicable school(s) academic year.

FNS Response: The NSLA, in section 11(a)(1)(F)(x)(I), requires that LEAs electing CEP notify the State agency and provide documentation establishing eligibility by the June 30 prior to the applicable school year. To facilitate election of CEP during the first three years of nationwide availability, FNS published guidance extending the deadline for CEP elections to August 31 for SYs 2014–15, 2015–16, and 2016–17. For SY 2016–17, this flexibility was detailed in SP 30–2016, Extension of the Deadline for Local Educational Agencies to Elect the Community Eligibility Provision for School Year 2016–17 (available at: *http://www.fns.usda.gov/extension-deadline-leas-elect-cep-*

sy2016-17). These guidance documents also granted further discretion to State agencies, permitting them to allow CEP elections to occur in the middle of a school year, provided that doing so would be logistically and administratively feasible.

These deadline extensions were offered as flexibilities to facilitate the initial implementation of CEP. As a new counting and claiming option, many State and local officials were initially unfamiliar with CEP's operational requirements and requested that FNS extend the election window to allow for careful decision-making. In SY 2014–15, the deadline extension to August 31 facilitated a 22 percent overall increase in CEP elections, significantly increasing children's access to nutritious meals in high-need schools.

However, because the June 30 deadline is required by statute, FNS is maintaining this deadline in the final rule. Additionally, it should be noted that CEP now has been available on a nationwide basis for multiple school years and State and local officials have gained a better understanding of the provision through experience and the availability of FNS-published guidance. As such, FNS does not anticipate granting permanent flexibility on the election deadline. Instead, FNS will evaluate the need for an extension of the June 30 deadline and provide guidance, as appropriate.

Accordingly, this final rule retains in § 245.9(f)(4)(i) the requirement to elect CEP by submitting required documentation no later than June 30 of the prior school year.

State Agency Concurrence

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(4)(ii) would require an LEA seeking to elect CEP to obtain concurrence from the State agency that election documentation submitted is complete and accurate, and that the LEA meets all eligibility requirements.

Comments: Two commenters, a program operator and an advocacy group, recommended allowing State agencies to shift administrative responsibility for reviewing the accuracy of LEA-submitted election documentation and confirming CEP eligibility status to the LEA level. These commenters also suggested changing the word "concurrence" at 7 CFR 245.9(f)(4)(ii) in the proposed rule to "confirmation," in addition to incorporating clarifying language into the preamble of the final rule.

Thirty-two commenters, including advocates and State agencies, asked FNS to clarify the criteria to be used when State agencies review LEAs seeking to implement CEP. One commenter suggested allowing State agencies a window of up to 30 days following an LEA's notification of intent to elect CEP to confirm that the LEA in question is eligible.

FNS Response: The intent of the statute, detailed throughout section 11(a)(1)(F) of the NSLA, is for State agencies to serve in a supervisory capacity when identifying and confirming documentation from LEAs eligible to elect CEP. State agencies must collect and compile LEA and school-level eligibility lists as part of the CEP public notification process. Section 11(a)(1)(F)(x)(I) of the NSLA requires LEAs to submit documentation supporting the ISP to the State agency to establish CEP eligibility and the claiming percentages. This documentation is subject to review by the State agency upon election, and as part of the Administrative Review process. Considering the mandated and overarching responsibilities of the State agency in these regards, this final rule maintains the requirement for State agencies to review CEP elections made by LEAs. However, FNS agrees with and accepts commenters' recommended change in language from "concur" to "confirm." The use of the word "confirm" more accurately reflects the State responsibilities to ensure that the ISP and claims for reimbursement are accurate. This change is reflected in the regulatory text of the final rule in § 245.9(f)(4)(ii).

Required criteria for State agency review of CEP documentation were not detailed in the proposed rule and an informal FNS inquiry revealed that policies varied greatly among State agencies. In some cases, initial reviews were being conducted at or around the time of election for all or a substantial portion of ISP records. Alternatively, some States conducted less thorough reviews or did not associate "concurrence" with a review of election documents, waiting until the LEA's next administrative review before checking the accuracy of ISP documentation.

State agencies are required to confirm the eligibility status of any school or LEA seeking to claim meals under CEP, and must substantiate any documentation submitted to ensure the accuracy of the ISP. Doing so mitigates the subsequent risk of inaccurate claims for reimbursement and/or fiscal action. This final rule retains the State agency's responsibility to confirm an electing LEA's eligibility for CEP and the ISP that is the statutory basis of the Federal reimbursement.

To clarify the State agency's responsibilities during the CEP election process, FNS issued detailed guidance in policy memo SP 15–2016, Community Eligibility Provision: State Agency Procedures to Ensure Identified Student Percentage Accuracy (available at: *http://www.fns.usda.gov/sites/default/files/cn/SP15-2016os.pdf*), and in comprehensive CEP Planning and Implementation Guidance (available at: *http://www.fns.usda.gov/school-meals/community-eligibility-provision-resource-center*), which provides in-depth information on this topic. To facilitate this process, FNS made available sample checklist worksheets for both LEAs and State agencies to use when determining or confirming an ISP (available at: *http://www.fns.usda.gov/school-meals/community-eligibility-provision-resource-center*). Regardless of the initial review process, State agencies must confirm eligibility before LEAs are permitted to claim meals under CEP. Accordingly, the regulatory text of the final rule, in § 245.9(f)(4)(ii), requires State agencies to "confirm" an LEA's eligibility to elect CEP.

Meals at No Cost

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(4)(iii) would require an LEA to ensure that participating schools offer no-cost reimbursable breakfasts and lunches to all students during the 4-year cycle, and count the number of reimbursable breakfasts and lunches served each school day.

Comment: One commenter requested clarity on whether the count of reimbursable meals represented a count of meals served or a count of students served, and suggested that there may be a conflict between counting reimbursable meals versus counting students served.

FNS Response: Schools participating in CEP must have an adequate point of sale system to ensure that reimbursable breakfasts and lunches served are separately and accurately counted each day. These counts are needed because the free and paid claiming percentages are applied to the total number of reimbursable breakfasts and lunches served each month to determine the reimbursement under CEP.

Accordingly, this final rule retains the meal counting requirement in § 245.9(f)(4)(iii).

Household Applications

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(4)(iv) would prohibit an LEA from collecting applications for free and reduced price school meals on behalf of children in schools participating in CEP. Any LEA seeking to obtain socioeconomic data from children receiving free meals under this section must develop, conduct, and fund that effort totally separate from, and not under the auspices of, the NLSP or SBP.

Comments: Six commenters, including individuals, program operators, and advocates, recognized that, because of widespread reliance on free and reduced price data as a poverty measure, the loss of this data in CEP schools could impact the delivery of benefits to high poverty schools and students. Additionally, six commenters suggested that, in the absence of household applications, FNS develop an alternative method for assessing the socioeconomic status of student populations. One commenter recommended multiplying TANF data by the CEP multiplier to determine Federal Title I funding.

Two commenters requested that FNS publish specific language reminding LEAs transitioning to CEP to consider, and plan for, potential issues surrounding the loss of traditional free and reduced price application data. These commenters indicated that advance planning and communication with other stakeholders might better ensure a fully successful implementation of CEP, while preventing unnecessary paperwork for families and schools.

FNS Response: The definition of "identified students," which serves as the basis for assessing socioeconomic status under CEP, is expressly established in section 11(a)(1)(F)(i) of the NSLA as "students certified based on documentation of benefit receipt or categorical eligibility as described in section 245.6a(c)(2) of title 7, Code of Federal Regulations (or successor regulations)." This provision is a key component of CEP in that it leads directly to the reduction in administrative burden and program integrity by relying on existing information obtained through the direct certification process.

One of the most important benefits of CEP election is the potential to substantially reduce administrative paperwork related to the Federal school meal programs by eliminating the household application process. This message has been communicated extensively to stakeholders, and State agencies have been encouraged to minimize paperwork burdens for households and school officials wherever possible. The USDA's creation of a separate method for assessing the socioeconomic status of student populations would not be consistent with the intent of the HHFKA amendments, which eliminated the collection of household applications under CEP as part of a broad effort to enhance the administrative efficiency of the school meal programs in high poverty LEAs. HHFKA did not amend the NSLA with any provision for the replacement at CEP schools of the socioeconomic data that would have been collected previously by way of household applications. As a result, the cost of any such data collection would not be an allowable program cost since no purpose related to the NSLP and SBP is served.

To facilitate funding in Federal, State, and local education programs, some States have chosen to replicate free and reduced price data by way of an alternate income form developed with non-program funds. Many States and LEAs have historically used school meals application data as a poverty measure. FNS recognizes that, to facilitate CEP implementation, some States may require LEAs to collect household income information to maintain education funding and/or benefits to low-income schools and students. However, any such collections may not be conducted under the auspices of the NSLP or SBP. Furthermore, participation in these collections may never be presented to the household as a condition for receiving a school meal, or present a real or perceived barrier to participation in any of the school meal programs. FNS encourages States to develop alternative measures of income that do not involve the reintroduction of paperwork that is eliminated by CEP participation. FNS cannot limit or prohibit the use of such alternative measures of income if the State agency or LEA has determined that such a method is needed, other than, as noted above.

While FNS is unable to specifically require or endorse any other approach to collecting socioeconomic data, we understand that the loss of free and reduced price meal application data may present a barrier for some LEAs to electing CEP. FNS has worked extensively to ensure that State agencies and eligible LEAs are aware of alternative means of assessing socioeconomic status. FNS has coordinated meetings and webinars to share best practices related to assessing socioeconomic status in the absence of household applications. In addition, FNS worked with the National Forum on Education Statistics to develop a guide on alternative measures of socioeconomic status for use in education data systems[1] (available at: *http://nces.ed.gov/pubs2015/2015158.pdf*).

Funding allocations under the U.S. Department of Education's (DoED) Title I program do not fall under the jurisdiction of USDA; therefore, FNS does not have authority to establish requirements related to how this funding is distributed. DoED has published comprehensive Title I guidance for State and local agencies to clarify options and program requirements for CEP schools (available at *http://www.fns.usda.gov/updated-title-i-guidance-schools-electing-community-eligibility).* FNS has worked extensively with DoED to develop this guidance and has provided technical assistance to various stakeholders as needed.

Accordingly, this final rule does not authorize alternative methods to assess socioeconomic status in the absence of household applications which would in any way relate to the NSLP or SBP. Furthermore, the final rule states in § 245.9(f)(4)(iv) that household applications may not be used under CEP, and that other alternative measures of income developed by a State agency or LEA may not be developed, conducted, or funded with NSLP or SBP funds.

Direct Certification

Proposed Rule: The proposed rule at 7 CFR 245.6(b)(1)(v) would require LEAs or schools electing CEP under § 245.9(f) to conduct direct certification only in the year prior to the first year of a CEP cycle or, if seeking to update the ISP, in the second, third, or fourth year of a cycle.

Comments: Two advocacy organizations requested that FNS require LEAs to conduct a student data match between SNAP and student enrollment records each year while enrolled in CEP to ensure that LEAs have the opportunity to update their ISP in the event that match rates improve from one year to the next.

FNS Response: FNS agrees that there is significant value to be gained from requiring a student data match with SNAP at least once each year. Conducting this match with SNAP will enable schools to take advantage of any increases in ISPs and examine trends to facilitate planning for upcoming school years. To this end, this final rule requires LEAs to conduct a data match between SNAP records and student enrollment records at CEP schools at least once annually. The rule further specifies that State agencies may conduct SNAP data matching on behalf of LEAs and exempt LEAs from the requirement. This final rule also extends this requirement to Provision 2 and Provision 3 schools to ensure consistency among schools operating special assistance certification and reimbursement alternatives. It should be noted, however, that this data matching process may not be used to assess individual student eligibility for free or reduced price school meals at CEP schools, or at schools operating Provisions 2 or 3. All students in CEP and Provision 2 and 3 schools already have access to meals at no cost.

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[1] National Forum on Education Statistics. (2015). *Forum Guide to Alternative Measures of Socioeconomic Status in Education Data Systems.* (NFES 2015–158). U.S. Department of Education. Washington, DC: National Center for Education Statistics.

Because student data matching with SNAP will be required annually, States will retain two options for reporting Data Element #3 on the FNS–834, State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report. States may report data matching efforts between SNAP records and student enrollment records from October each year or, alternatively, may choose to include, for CEP schools, the count from the SNAP match conducted as of April 1 of the same calendar year, whether or not it was used in the CEP claiming percentages.

Accordingly, FNS has modified the proposed language in § 245.6(b)(1)(v) to require LEAs to conduct a data match between SNAP records and student enrollment records at CEP schools, and schools operating Provision 2 or Provision 3 special assistance certification and reimbursement alternatives, at least once annually. Additionally, FNS has modified the language in § 245.13(c)(3) to specify options State agencies have for reporting data matching efforts.

Free and Paid Claiming Percentages

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(4)(v) would require Federal reimbursements for CEP schools to be based on free and paid claiming percentages applied to the total number of reimbursable lunches and breakfasts served each month. Reduced price students are accounted for in the free claiming percentage, eliminating the need for a third claiming rate. The free claiming percentage would be calculated by multiplying the ISP by a factor of 1.6. The paid claiming percentage would be represented by any remaining share of students, up to 100 percent.

Comments: One State agency recommended that the share of meals reimbursed at the paid rate at CEP schools be calculated by subtracting the number of meals served at no cost (calculated by applying the free claiming percentage) from the total number of meals served, because it is similar to how claiming percentages are calculated for Provision 2 schools. Two additional commenters suggested that rounding rules be applied when determining free and paid claiming percentages.

FNS Response: Section 11(a)(1)(F)(iii) of the NSLA establishes that special assistance payments under CEP must be calculated on a percentage basis. When claiming percentages are applied as specified in the statute, the result should not be substantively different from the methodology described by the commenter (subtracting free meals served from total meals served), and is consistent with Provision 2. The total number of meals reimbursed at the free and paid rates must equal the total number of breakfasts and lunches served.

Since publication of the proposed rule, FNS issued guidance to clarify rounding rules for calculating claiming percentages (see Question #52 in SP 19–2016, Community Eligibility Provision: Guidance and Updated Q&As, available at: *http://www.fns.usda.gov/school-meals/community-eligibility-provision-resource-center*). This is to ensure the accuracy of claiming and Federal reimbursements under the school meal programs, consistent with existing program requirements. Simple rounding is permitted when calculating the number of meals to be reimbursed at the free rate to ensure that meals claimed for reimbursement are expressed in whole numbers that match daily meal counts.

Accordingly, this final rule retains the proposed calculation and rounding methodology for determining the free and paid claiming percentages and codifies it in § 245.9(f)(4)(v).

Multiplier Factor

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(4)(vi) would require a 1.6 multiplier factor to be used for an entire 4-year cycle to calculate the percentage of lunches and breakfasts to be claimed at the Federal free rate.

Comments: Section 11(a)(1)(F)(vii)(II) of the NSLA provides the Secretary the option to establish the CEP multiplier between 1.3 and 1.6. Thirty-two comments were received from various stakeholders recommending that FNS retain the 1.6 multiplier permanently in the final rule to provide program operators with certainty as to the reimbursements that will be received. Some commenters also suggested removing the Secretary's discretion to adjust the multiplier. Commenters were nearly unanimous in their support for retaining the multiplier at 1.6.

FNS Response: FNS agrees with commenters that providing stability around the multiplier factor will minimize administrative uncertainty and give program operators greater confidence when planning program operations. The 1.6 multiplier is identified in the NSLA as the default initial multiplier. An analysis conducted around the time that the HHFKA was being drafted showed that, for every 10 children directly certified, up to 6 additional children relied on the application process to access free or reduced price meal benefits. An evaluation of CEP in pilot States also showed that the 1.6 multiplier appears to be an accurate reflection of the relationship between the free and reduced-price student percentage and the ISP in a typical participating LEA.[2]

Accordingly, § 245.9(f)(4)(vi) of this final rule retains 1.6 as the multiplier to be used to determine CEP claiming percentages for an entire 4-year CEP cycle.

Cost Differential

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(4)(vii) would require the LEA of a CEP school to pay, with funds from non-Federal sources, the difference between the cost of serving lunches and breakfasts at no charge to all participating children and the Federal reimbursement received.

Comments: Thirty-one comments were received from various stakeholders, including individuals, advocates, and program operators, requesting that FNS provide a more detailed explanation of the requirements surrounding the use of non-Federal dollars in CEP schools to cover operating costs that exceed Federal reimbursements. The commenters requested specific language to clarify that an additional funding stream is not required when Federal reimbursements cover all operating costs. In addition, one commenter expressed general concern regarding an LEA's ability to cover the cost of meals not reimbursed at the free rate.

FNS Response: Subsequent to publication of the proposed rule, FNS published specific guidance related to the use of non-Federal funds as part of SP 19–2016, Community Eligibility

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[2] Logan, Christopher W., Patty Connor, Eleanor L. Harvill, Joseph Harkness, Hiren Nisar, Amy Checkoway, Laura R. Peck, Azim Shivji, Edwin Bein, Marjorie Levin, and Ayesha Enver. *Community Eligibility Provision Evaluation.* Project Officer: John R. Endahl. Prepared by Abt Associates for the U.S. Department of Agriculture, Food and Nutrition Service, February 2014.

Provision: Guidance and Updated Q&As (available at: *http://www.fns.usda.gov/school-meals/community-eligibility-provision-resource-center*). This guidance clarifies that the use of non-Federal funds is not required if all operating costs are covered by the Federal reimbursement and other assistance provided under the NSLA and the Child Nutrition Act of 1966. It is important to remember that participation in CEP is a local-level decision that requires LEAs to evaluate their financial capacity to operate successfully. When deciding whether to elect CEP, eligible schools must consider their ability to cover their operating costs with the Federal reimbursement and any other available funds, including those provided by the State agency either to meet revenue matching requirements outlined in Section 7 of the NSLA or additional funds provided by State or local authorities on a separate, discretionary basis. To assist LEAs with making sound financial decisions related to CEP participation, FNS has provided extensive guidance and technical assistance to State and local agencies. FNS has also developed practical tools to assist LEAs in estimating the level of Federal reimbursement under CEP. These resources are available online at the FNS CEP Resource Center: *http://www.fns.usda.gov/school-meals/community-eligibility-provision-resource-center*.

Accordingly, § 245.9(f)(4)(vii) of this final rule retains the cost differential requirement but includes new language to clarify that the use of non-Federal funds is not required if all operating costs are covered by the Federal assistance received.

New 4-Year Cycle

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(4)(viii) would require that, to begin a new 4-year cycle, LEAs or schools must establish a new ISP as of April 1 of the fourth year of the previous cycle. If the LEA or school meets all eligibility criteria, it may begin a new 4-year cycle, subject to State agency confirmation.

Comments: Thirty-two comments from various stakeholders, including individuals, program operators, and advocates, recommended that LEAs be permitted to begin a new 4-year cycle for any school year, to avoid creating a disincentive to immediate enrollment among LEAs that have reason to believe that their ISP may increase in a future school year.

FNS Response: Section 11(a)(1)(F)(iv) of the NSLA permits LEAs to recalculate their ISP each school year. FNS agrees with commenters that ensuring LEAs are able to begin a new 4-year cycle when a higher ISP may be selected is an important element of CEP, and also serves as an incentive for LEAs to continue participating in CEP over time.

Accordingly, § 245.9(f)(4)(viii) of this final rule allows for the recalculation of the ISP and the start of a new 4-year cycle each school year.

Grace Year

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(4)(ix) would permit a LEA or school in the fourth year of a CEP cycle with an ISP of less than 40 percent but equal to or greater than 30 percent as of April 1 to continue using CEP for one additional year, referred to as a grace year.

Comments: One comment requested additional information on how to calculate the ISP accurately during the fourth year of the cycle and requested clarification on whether the 1.6 multiplier is guaranteed to carry forward into a fifth year if an LEA takes advantage of the CEP grace year.

FNS Response: Schools and LEAs in the fourth year of a 4-year CEP cycle will compile new identified student data reflective of April 1 of the cycle's fourth year to: (1) Support a new 4-year CEP cycle with a new ISP; and (2) meet the following school year's publication and notification requirements as outlined in the final rule at § 245.9(f)(5). Should the LEA determine that a new 4-year cycle may not be immediately elected because their ISP is less than 40 percent but at least 30 percent, the LEA may elect to participate in CEP for an additional grace year using the ISP as of April 1 of the fourth year of their current CEP cycle. The Federal reimbursement in the grace year is based on the ISP as of April 1 in the fourth year of the CEP cycle multiplied by 1.6. If the ISP as of April 1 of the grace year does not meet the 40 percent ISP requirement, the LEA must return to standard counting and claiming, or enroll in another special provision option for the following school year.

Accordingly, this final rule retains the grace year provision in § 245.9(f)(4)(ix) and clarifies that the 1.6 multiplier is used in the grace year to determine the claiming percentage.

Identification of Potential CEP LEAs and Schools

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(5) would require that, no later than April 15 of each school year, each State agency must notify LEAs of district-wide eligibility, including LEAs: (1) With a district-wide ISP of at least 40 percent; (2) with a district-wide ISP of less than 40 percent but at least 30 percent: (3) Currently operating CEP district-wide; and (4) LEAs operating CEP district-wide in the fourth year of the CEP cycle and eligible for a grace year. In addition, annually by April 15, LEAs must submit to the State agency a list(s) of schools: (1) With an ISP of at least 40 percent; (2) an ISP less than 40 percent but at least 30 percent; and (3) schools in the fourth year of a CEP cycle eligible for a grace year. The State agency may exempt LEAs from this requirement if the State agency already collects the required information.

Comments: One commenter requested that FNS change the notification requirements so two requirements do not share an April 15 deadline.

FNS Response: Section 11(a)(1)(F)(x) of the NSLA requires that States publish, annually by May 1, lists of LEAs and schools eligible and nearly eligible to elect CEP for the next school year. To meet this requirement, States must notify LEAs of eligibility, and LEAs must notify State agencies of school-level eligibility. Requiring this exchange of information by April 15 allows States to meet the May 1 publication deadline. States and LEAs may share the required information with each other prior to the April 15 deadline. Further, State agencies that have access to school-level eligibility information may exempt LEAs from this requirement.

Accordingly, this final rule retains in § 245.9(f)(5) and (6) the requirements that LEAs and State agencies, respectively, must exchange, by April 15, lists of LEAs and schools potentially eligible to elect CEP. Further, State agencies must publish the lists online and submit the information to FNS.

Public Notification Requirements

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(7) would require State agencies, by May 1 of each school year, to make available comprehensive and readily accessible information, in a format prescribed by FNS, regarding the eligibility status of LEAs and schools to participate in CEP in the next school year.

Comments: Thirty-one commenters recommended that FNS ensure that State agencies publicly post the lists of eligible and nearly eligible LEAs and schools by the May 1 deadline to allow adequate time for outreach and to give LEAs time to make an election decision before the traditional school year ends. One commenter suggested that FNS develop guidelines for the length of time that State agencies must post the required lists. Another commenter requested clarification on the public notification requirements.

FNS Response: Section 11(a)(1)(F)(x)(III) of the NSLA requires, annually by May 1, State agencies to submit to FNS lists of LEAs eligible to elect CEP. This final rule requires States to publish lists of eligible and nearly eligible LEAs and schools on the Stage agency's Web site in a readily accessible format prescribed by FNS. To facilitate outreach, FNS publishes links to each State's lists at: *http://www.fns.usda.gov/school-meals/community-eligibility-provision-status-school-districts-and-schools-state.* FNS maintains a map linking to each State's lists for the duration of the school year, until new lists are published for the forthcoming school year. Since publishing the proposal, FNS has provided technical assistance to clarify the notification and publication requirements for State agencies and LEAs, including addressing frequently asked questions, issuing policy memos, developing a template to organize eligibility information, and conducting multiple webinars to explain the publication and notification requirements.

Accordingly, § 245.9(f)(7)(iii) of this final rule maintains the requirement for State agencies to publish lists of eligible and nearly eligible LEAs and schools on the State agency Web site and includes additional language requiring States to maintain eligibility lists on their Web site until the following May 1, when new eligibility lists are published.

Notification Data

Proposed Rule: The proposed rule at 7 CFR 245.9(f)(8) would require that data compiled by the State agency for the purposes of fulfilling annual CEP notification requirements be representative of the current school year and reflective of April 1, and use the ISP as a basis for determining the projected eligibility status. If data reflective of April 1 are not available for the notification process, the State agency would be required to ensure the presence of a notation that indicates the data are intended for informational purposes and do not confer eligibility for community eligibility.

Comments: One commenter recommended using ISP data from October to meet notification requirements because it is more accurate and less burdensome. Another commenter expressed concern that direct certification data may not be used in lieu of the ISP. In contrast to those comments, one commenter recommended that no proxy data be allowed to meet notification requirements and, instead, that eligibility lists reflect only data documenting the actual numbers of identified students.

FNS Response: To ease administrative burden, October data reported on the FNS–742, School Food Authority Verification Summary Report, and data used to complete the FNS–834, State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report (for current Provision schools), may be used to meet the CEP notification requirements only. If school-specific identified student data is not readily available, State agencies or LEAs may use the number of directly certified students (*e.g.*, with SNAP and/or with other assistance programs, as applicable) as a proxy for the number of identified students. If direct certification data is used, it must be clearly noted on the eligibility lists that the data does not fully reflect the number of identified students. Further, if data used to generate notification lists are not reflective of April 1 of the current school year, the lists must include a notation that the data are intended for informational purposes only and do not confer eligibility to elect CEP.

Accordingly, § 245.9(f)(8) of this final rule retains the flexibility for State agencies and LEAs to meet notification requirements and generate CEP eligibility lists using direct certification data. However, data not reflective of April 1 may not be used to elect CEP and may not be used as the basis for determining the ISP/claiming percentages, unless approved by FNS.

Transfer and Carryover of Free Meal Eligibility

Proposed Rule: The proposed rule at 7 CFR 245.9(l) would require that a student's access to free meals be extended for up to 10 operating school days when transferring from a CEP to a non-CEP school within the same LEA. For student transfers between two separate LEAs, free meals may be offered for up to 10 operating school days at the discretion of the receiving LEA.

Comments: FNS received 32 similar comments from advocates and State agencies recommending greater protection for students from low-income households who transfer from CEP schools to non-CEP schools during the school year. Commenters highlighted the importance of ensuring that these students have continuous access to no-cost school meals when changing schools, particularly because households accustomed to CEP may not know they need to complete an application for children to receive school meal benefits. Specifically, commenters recommended providing up to 30 days of meals at no cost to students who transfer from a CEP to a non-CEP school, both within an LEA and between LEAs.

FNS Response: FNS acknowledges that changing schools may be a significant transition for students and households. Adjusting to a new school environment can present unique challenges, particularly for low-income households whose circumstances may have necessitated the transfer. FNS agrees with commenters and seeks to ensure that vulnerable children have uninterrupted access to healthy school meals during these critical transitions.

FNS discussions around transfer (within the school year) and carryover (between school years) eligibility when students move from CEP to non-CEP schools unveiled policy inconsistencies among CEP and other alternative reimbursement options: Provision 2 and Provision 3 (described in §§ 245.9(b) and (d), respectively). Conversations with State agencies at national and regional meetings emphasized the need for consistent policies and operational ease related to the transfer of students from Provision to non-Provision schools. These conversations also revealed possible gaps in benefits when students from low-income households move to new schools, particularly between LEAs, both during and between school years. While many students are likely to change schools at least once, data from the DoED shows that poor and minority students change schools more often than their peers. Research suggests that mobility has a negative impact on academic achievement, leading to lower test scores and higher dropout rates. Supporting low-income, highly-mobile students by providing them access to school meals during a transition is an important, practical investment in our high-need communities, and in our nation's future.[3]

Schools face a range of challenges in meeting the academic, social, and emotional needs of students who change schools. Teachers report that new and transfer students often have difficulty coping with changes in curriculum content and instruction. Teachers and principals also report that schools have to address the needs of these students' households and the circumstances which often underlie frequent school changes.[4] Further, students may arrive without records or with incomplete records, making it difficult for school food service staff to immediately determine eligibility for school meals. Given the many challenges involved with school transfers and moves, it is crucial to ensure that students from low-income households have consistent access to school meals during these transitions.

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[3] U.S. Government Accountability Office. (2010). *Many Challenges Arise in Educating Students Who Change Schools Frequently.* (GAO Publication No. 11–40). Washington, DC: U.S. Government Printing Office.

[4] Id.

Based on the public comments received and information gained from national implementation and internal policy analysis, § 245.9(l) of this final rule requires that a receiving LEA provides free meals to students transferring from Provision schools to non-Provision schools for up to 10 operating days or until a new eligibility determination is made. For student transfers within an LEA, this requirement is effective upon implementation of the final rule. FNS recognizes the logistical challenges traditionally associated with the transfer of student records between LEAs, where systems allowing for the sharing of information may not be in place. Therefore, for student transfers between different LEAs, this requirement will apply no later than July 1, 2019. This provides program operators time to establish procedures for ensuring that students transferring from a Provision school in another LEA during the school year are promptly identified.

Further, for transfers within and between LEAs, the receiving LEA may, at the State agency's discretion, provide the transferred student free reimbursable meals for up to 30 operating days or until a new eligibility determination is made, whichever comes first. This discretion is effective upon implementation of the final rule.

Additionally, section 245.6(c) of this final rule protects students from low-income households moving from a Provision school to a non-Provision school between school years. At the discretion of the State agency, all LEAs receiving students who had access to free meals in the prior year at a Provision school may be offered free reimbursable meals for up to 30 operating days or until a new eligibility determination is made in the current school year, whichever comes first. This discretion, effective upon implementation of the final rule, is intended to protect students who move to a non-Provision school within the same LEA or in a different LEA between school years by giving them access to what is commonly referred to as carryover eligibility.

Accordingly, § 245.9(l) of this final rule retains the requirement that students who transfer from CEP to non-CEP schools during the school year must receive up to 10 days of free meals. Additionally, this requirement (*i.e.,* up to 10 days of free meals) is expanded to benefit students transferring from Provision schools under § 245.9 to non-Provision schools both within and between LEAs during the school year. Delayed implementation (not later than July 1, 2019) is included for student transfers between LEAs. Finally, §§ 245.9(l) and 245.6(c)(2) have been modified to give States discretion to allow LEAs to provide up to 30 days of meals at no cost to students moving from a Provision school to a non-Provision school during and between school years.

III. Implementation Resources

FNS promotes ongoing implementation of CEP nationwide, fortifying it as an established model for operating the Federal school meal programs and strives to ensure that all eligible school districts are well informed about CEP and its benefits. Accordingly, FNS provides resources to help school districts make sound decisions when considering CEP elections, and collaborates with State and local partners and their stakeholders in providing this technical assistance. This technical assistance has consisted of a variety of activities to promote CEP that include: Collaborating with partners and stakeholders; executing outreach plans; conducting trainings; and delivering presentations to diverse audiences, particularly targeting education program administrators.

In addition to these activities, FNS has established an online resource center (*http://www.fns.usda.gov/school-meals/community-eligibility-provision-resource-center*) that provides extensive resources for parents, teachers, and school officials at the local, State, and Federal level to better understand CEP and its positive benefits, along with useful tools to help facilitate successful implementation. FNS also developed an estimator tool to help LEAs determine if CEP is financially viable, and to help assess LEA groupings to optimize the Federal reimbursement.

Additionally, FNS has conducted numerous CEP webinars for State and local program operators on a wide range of topics that include: CEP Basics; Outreach to Eligible Districts; Title I and E-Rate Funding; Allocating State and Local Funding without Applications; Administrative Reviews; Successful Implementation Strategies; How to Partially Implement CEP (in some, but not all, schools in an LEA); Direct Certification and Reporting; Publication and Notification Requirements; and Financial Considerations for CEP. Recordings of all webinars are available online at the CEP Resource Center.

FNS will continue to provide technical assistance, work to eliminate barriers to participation and share best practices for implementation in an effort to reach children in every school that stands to benefit from CEP.

IV. Procedural Matters

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget; therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been determined that this final rule will not have a significant impact on a substantial number of small entities. The final rule will establish requirements for LEAs and schools operating the CEP. The provisions of this final rule were developed with stakeholders' input, and are intended to reflect the operational needs of LEAs of all sizes. Furthermore, the final rule is largely consistent with existing sub-regulatory guidance issued by FNS to assist State and local agencies with CEP implementation. No specific additional burdens are placed on small LEAs seeking to operate CEP.

It should be noted that small LEAs generally employ fewer staff in the operation of their school meal programs; many of these individuals may fill multiple roles for a given school or district. As such, the predicted impact of the final rule on small LEAs is expected to be positive in terms of reducing the paperwork burden. The administrative efficiencies offered by CEP through the elimination of the application process saves officials at small LEAs hours of paperwork that would normally need to be completed each school year. Currently, many small LEAs participate in CEP; in SY 2014–15, about half of the more than 2,000 school districts electing CEP had enrollments of 500 or less.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for 2015 inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable)* in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP, SBP, SAE, SMP, CACFP and SFSP are listed in the Catalog of Federal Domestic Assistance Programs under NSLP No. 10.555, SBP No. 10.553, SAE No. 10.560, SMP No. 10.556, CACFP No. 10.558, and SFSP No. 10.559, respectively and are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials (See 2 CFR chapter IV).

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

Prior Consultation With State Officials

FNS National and Regional Offices have ongoing, formal and informal discussions with State agency officials regarding the Child Nutrition Programs and policy issues. FNS specifically delayed publication of this final rule to allow for at least one full year of nationwide CEP implementation, so as to consult with State and local officials and better inform the rulemaking process. Prior to this rulemaking, FNS interacted extensively with State agencies throughout the Provision's phased-in implementation, and worked collaboratively to determine which State agencies would participate for each of the three phase-in years. Once selected, FNS consulted regularly with the pilot States to solicit feedback and better inform the process of developing sub-regulatory guidance. More broadly, in an effort to inform stakeholders and solicit feedback, FNS held several conference calls and meetings with State agencies to discuss the statutory requirements that would serve as the foundation for this rule. FNS also discussed CEP statutory requirements with program operators at State and national conferences.

To facilitate nationwide CEP implementation in SY 2014–15, FNS held periodic State agency conference calls that included all State agencies. These cross-regional gatherings served as an opportunity to share and discuss concerns, and for the former pilot States to share their valuable implementation experience. Furthermore, FNS Regional Office staff assisted State agencies with targeted technical assistance where needed, and served as a liaison for policy and implementation questions. FNS outreach has also extended to State education officials, including those administering State and Federal education funding. In addition, FNS received 78 public comments in response to the proposed rule (78 FR 65890), including comments from State agency officials. These various forms of consultation produced valuable input that has been considered in drafting this final rule.

Nature of Concerns and the Need To Issue This Rule

The key concern raised by State agencies and LEAs was the general feasibility of implementing CEP without established regulatory and sub-regulatory guidance. Furthermore, many State agency officials were concerned that the elimination of the household application process would limit their ability to collect data on students from low-income households. Traditionally, free and reduced price school meal data, which is at least partially collected through the household application process, has served as an important proxy for poverty status, and has been used as a basis to distribute other forms of funding and benefits.

Extent To Which We Meet Those Concerns

FNS has considered the impact of this final rule on State and local operators, and has developed a rule that will guide CEP implementation in the most effective and least burdensome manner. The final rule has been informed by the feedback received from State and local officials through this rulemaking process, and through extended consultations with participating and prospective States and LEAs. In an effort to assist State and local agencies prior to the publication of this final rule, FNS published comprehensive sub-regulatory guidance, including memoranda and a *CEP Planning and Implementation Guidance Manual,* which are consistent with the provisions of the final rule. In addition, the final rule will help to alleviate data concerns by requiring States/LEAs to conduct at least one SNAP data match per year.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. However, FNS does not expect significant inconsistencies between this final rule and existing State or local regulations regarding the provision of school food service operations under CEP. The final rule was developed with input from State and local agencies and was based, in part, on their experience with CEP implementation. CEP has been available as a pilot program since SY 2011–12 and nationwide since SY 2014–15, with successful implementation in all 50 States, the District of Columbia, and Guam. Per statutory requirements outlined in the NSLA, State agencies operating the Federal school meal programs are unable to bar an eligible

LEA from CEP participation. FNS has produced extensive guidance in addition to this rulemaking to ensure a sound operational environment exists for LEAs electing CEP. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures under § 210.18(q) or § 235.11(f) must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," and 1512–1, "Regulatory Decision Making Requirements," to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. After a careful review of the proposed rule's intent and provisions, FNS has determined that this final rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability, nor is it intended to have a differential impact on minority owned or operated business establishments, and women-owned or operated business establishments that participate in the Child Nutrition Programs. The requirements established in this final rule are intended to improve access to school meals, and support academic achievement for all students in high-poverty LEAs and schools. The requirements are not expected to negatively impact the protected classes.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FNS provides regularly scheduled quarterly consultation sessions as a venue for collaborative conversations with Tribal officials or their designees. The most recent quarterly consultation sessions were held on August 19, 2015; November 18, 2015; February 17, 2016; and May 18, 2016. FNS provided a review of the most recent CEP guidance at the August 2015 consultation. At the November 2013 consultation, FNS discussed the proposed rule with Tribal officials and encouraged them to submit public comments. At the November 2015 consultation, FNS advised Tribal officials that the final rule was under development. No questions related to CEP arose. FNS will respond in a timely and meaningful manner to any Tribal government request for consultation concerning CEP. At the February 17, 2016 consultation, FNS asked Tribal officials to share best practices for conducting CEP outreach to eligible Tribal schools. FNS is unaware of any current Tribal laws that could be in conflict with this final rule.

Paperwork Reduction Act

A 60-day notice embedded in the proposed rule, "National School Lunch Program and School Breakfast Program: Eliminating Applications through Community Eligibility as Required by the Healthy, Hunger-Free Kids Act of 2010" published in the **Federal Register** at 78 FR 65890 on November 4, 2013 and provided the public an opportunity to submit comments on the proposed information collection burden resulting from this rule. No changes have been made to the proposed requirements in this final rulemaking. Thus, in accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with this final rule, which were filed under 0584–0026, have been submitted for approval to OMB. When OMB notifies FNS of its decision, FNS will publish a notice in the **Federal Register** of the action.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 245

Civil rights, Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR part 245 is amended as follows:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

■ 1. The authority citation for part 245 continues to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

■ 2. In § 245.6, revise paragraphs (b)(1)(v) and (c)(2) to read as follows:

§ 245.6 Application, eligibility and certification of children for free and reduced price meals and free milk.

* * * * *

(b) * * *

(1) * * *

(v) Local educational agencies and schools currently operating Provision 2 or Provision 3 in non-base years, or the community eligibility provision, as permitted under § 245.9, are required to conduct a data match between Supplemental Nutrition Assistance Program records and student enrollment records at least once annually. State agencies may conduct data matching on behalf of LEAs and exempt LEAs from this requirement.

* * * * *

(c) * * *

(2) *Use of prior year's eligibility status.* Prior to the processing of applications or the completion of direct certification procedures for the current school year, children from households with approved applications or documentation of direct certification on file from the preceding year, shall be offered reimbursable free and reduced price meals or free milk, as appropriate. The local educational agency must extend eligibility to newly enrolled children when other children in their household (as defined in § 245.2) were approved for benefits the previous year. However, applications and documentation of direct certification from the preceding year shall be used only to determine eligibility for the first 30 operating days following the first operating day at the beginning of the school year, or until a new eligibility determination is made in the current school year, whichever comes first. At the State agency's discretion, students who, in the preceding school year, attended a school operating a special assistance certification and reimbursement alternative (as permitted in § 245.9)) may be offered free reimbursable meals for up to 30 operating days or until a new eligibility determination is made in the current school year, whichever comes first.

* * * * *

■ 3. In § 245.9:

■ a. Remove "paragraph (k)" and add in its place "paragraph (m)" in paragraphs (c)(2)(iii)(A) and (B) and (e)(2)(iii)(A) and (B);

■ b. Remove the words "school food authority's" and add in their place the words "local educational agency's" in paragraphs (b)(5), (d)(3) introductory text, and (d)(7);

■ c. Remove "paragraph (g)" and add in its place "paragraph (h)" in paragraph (d)(3) introductory text;

■ d. Revise paragraphs (f) through (j);

■ e. Redesignate paragraph (k) as paragraph (m);

■ f. Add new paragraph (k);

■ g. Add paragraph (l)

■ h. Remove the words "School Food Authority" and "school food authority" and add in their place the words "local educational agency" and remove the words "School food authority" and add in their place the words "Local educational agency" wherever they appear; and

■ i. Remove the words "school food authorities" and add in their place the words "local educational agencies" and remove the words "School food authorities" and add in their place the words "Local educational agencies" wherever they appear.

The revisions and additions read as follows:

§ 245.9 Special assistance certification and reimbursement alternatives.

* * * * *

(f) *Community eligibility.* The community eligibility provision is an alternative reimbursement option for eligible high poverty local educational agencies. Each CEP cycle lasts up to four years before the LEA or school is required to recalculate their reimbursement rate. LEAs and schools have the option to recalculate sooner, if desired. A local educational agency may elect this provision for all of its schools, a group of schools, or an individual school. Participating local educational agencies must offer free breakfasts and lunches for the length of their CEP cycle, not to exceed four successive years, to all children attending participating schools and receive meal reimbursement based on claiming percentages, as described in paragraph (f)(4)(v) of this section.

(1) *Definitions.* For the purposes of this paragraph,

(i) *Enrolled students* means students who are enrolled in and attending schools participating in the community eligibility provision and who have access to at least one meal service (breakfast or lunch) daily.

(ii) *Identified students* means students with access to at least one meal service who are not subject to verification as prescribed in § 245.6a(c)(2). Identified students are students approved for free meals based on documentation of their receipt of benefits from SNAP, TANF, the Food Distribution Program on Indian Reservations, or Medicaid where applicable (where approved by USDA to conduct matching with Medicaid data to identify children eligible for free meals). The term identified students also includes homeless children, migrant children, runaway children, or Head Start children (approved for free school meals without application and not subject to verification), as these terms are defined in § 245.2. In addition, the term includes foster children certified for free meals through means other than an application for free and reduced price school meals. The term does not include students who are categorically eligible based on submission of an application for free and reduced price school meals.

(iii) *Identified student percentage* means a percentage determined by dividing the number of identified students as of a specified period of time by the number of enrolled students as defined in paragraph (f)(1)(i) of this section as of the same period of time and multiplying the quotient by 100. The identified student percentage may be determined by an individual participating school, a group of participating schools in the local educational agency, or in the aggregate for the entire local educational agency if all schools participate, following procedures established in FNS guidance.

(2) *Implementation.* A local educational agency may elect the community eligibility provision for all schools, a group of schools, or an individual school. Community eligibility may be implemented for one or more 4-year cycles.

(3) *Eligibility criteria.* To be eligible to participate in the community eligibility provision, a local educational agency (except a residential child care institution, as defined under the definition of "School" in § 210.2), group of schools, or school must meet the eligibility criteria set forth in this paragraph.

(i) *Minimum identified student percentage.* A local educational agency, group of schools, or school must have an identified student percentage of at least 40 percent, as of April 1 of the school year prior to participating in the community eligibility provision, unless otherwise specified by FNS. Individual schools participating in a group may have less than 40 percent identified students, provided that the average identified student percentage for the group is at least 40 percent.

(ii) *Lunch and breakfast program participation.* A local educational agency, group of schools, or school must participate in the National School Lunch Program and School Breakfast Program, under parts 210 and 220 of this title, for the duration of the 4-year cycle. Schools that operate on a limited schedule, where it is not operationally feasible to offer both lunch and breakfast, may elect CEP with FNS approval.

(iii) *Compliance.* A local educational agency, group of schools, or school must comply with the procedures and requirements specified in paragraph (f)(4) of this section to participate in the community eligibility provision.

(4) *Community eligibility provision procedures*—(i) *Election documentation and deadline.* A local educational agency, group of schools, or school that intends to elect the community eligibility provision for the following year for one or more schools must submit to the State agency documentation demonstrating the LEA, group of schools, or school meets the identified student percentage, as specified under paragraph (f)(3)(i) of this section. Such documentation must be submitted no later than June 30 and must include, at a minimum, the counts of identified students and enrolled students as of April 1 of the school year prior to CEP implementation.

(ii) *State agency review of election documentation.* The State agency must review the identified student percentage documentation submitted by the local educational agency to confirm that the local educational agency, group of schools, or school meets the minimum identified student percentage, participates in the National School Lunch Program and School Breakfast Program, and has a record of administering the meal program in accordance with program regulations, as indicated by the most recent administrative review.

(iii) *Meals at no cost.* A local educational agency must ensure participating schools offer reimbursable breakfasts and lunches at no cost to all students attending participating schools during the 4-year cycle, and count the number of reimbursable breakfasts and lunches served to students daily.

(iv) *Household applications.* A local educational agency, group of schools, or school must not collect applications for free and reduced price school meals on behalf of children in schools participating in the community eligibility provision. Any local educational agency seeking to obtain socioeconomic data from children receiving free meals under this section must develop, conduct, and fund this effort entirely separate from, and not under the auspices of, the National School Lunch Program or School Breakfast Program.

(v) *Free and paid claiming percentages.* Reimbursement is based on free and paid claiming percentages applied to the total number of reimbursable lunches and breakfasts served each month, respectively. Reduced price students are accounted for in the free claiming percentage, eliminating the need for a separate percentage.

(A) To determine the free claiming percentage, multiply the applicable identified student percentage by a factor of 1.6. The product of this calculation may not exceed 100 percent. The difference between the free claiming percentage and 100 percent represents the paid claiming percentage. The applicable identified student percentage means:

(*1*) In the first year of participation in the community eligibility provision, the identified student percentage as of April 1 of the prior school year.

(*2*) In the second, third, and fourth year of the 4-year cycle, LEAs may choose the higher of the identified student percentage as of April 1 of the prior school year or the identified student percentage as of April 1 of the year prior to the current 4-year cycle. LEAs and schools may begin a new 4-year cycle with a higher identified student percentage based on data as of the most recent April 1, as specified in paragraph (viii).

(B) To determine the number of lunches to claim for reimbursement, multiply the free claiming percentage as described in this paragraph by the total number of reimbursable lunches served to determine the number of free lunches to claim for reimbursement. The paid claiming percentage is multiplied by the total number of reimbursable lunches served to determine the number of paid lunches to claim for reimbursement. In the breakfast meal service, the free and paid claiming percentages are multiplied by the total number of reimbursable breakfasts served to determine the number of free and paid breakfasts to claim for reimbursement. For any claim, if the total number of meals claimed for free and paid reimbursement does not equal the total number of meals served, the paid category must be adjusted so that all served meals are claimed for reimbursement.

(vi) *Multiplier factor.* A 1.6 multiplier must be used for an entire 4-year cycle to calculate the percentage of lunches and breakfasts to be claimed at the Federal free rate.

(vii) *Cost differential.* If there is a difference between the cost of serving lunches and breakfasts at no cost to all participating children and the Federal assistance provided, the local educational agency must pay such difference with non-Federal sources of funds. Expenditure of additional non-federal funds is not required if all operating costs are covered by the Federal assistance provided.

(viii) *New 4-year cycle.* To begin a new 4-year cycle, local educational agencies or schools must establish a new identified student percentage as of April 1 prior to the 4-year cycle. If the local educational agency, group of schools, or school meet the eligibility criteria set forth in paragraph (f)(3) of this section, a new 4-year cycle may begin.

(ix) *Grace year.* A local educational agency, group of schools, or school with an identified student percentage of less than 40 percent but equal to or greater than 30 percent as of April 1 of the fourth year of a community eligibility cycle may continue using community eligibility for a grace year that continues the 4-year cycle for one additional, or fifth, year. If the local educational agency, group of schools, or school regains the 40 percent threshold as of April 1 of the grace year, the State agency may authorize a new 4-year cycle for the following school year. If the local educational agency, group of schools, or school does not regain the required threshold as of April 1 of the grace year, they must return to collecting household applications in the following school year in accordance with paragraph (j) of this section. Reimbursement in a grace year is determined by multiplying the identified student percentage at the local educational agency, group of schools, or school as of April 1 of the fourth year of the 4-year CEP cycle by the 1.6 multiplier.

(5) *Identification of potential community eligibility schools.* No later than April 15 of each school year, each local educational agency must submit to the State agency a list(s) of schools as described in this paragraph. The State agency may exempt local educational agencies from this requirement if the State agency already collects the required information. The list(s) must include:

(i) Schools with an identified student percentage of at least 40 percent;

(ii) Schools with an identified student percentage that is less than 40 percent but greater than or equal to 30 percent; and

(iii) Schools currently in year 4 of the community eligibility provision with an identified student percentage that is less than 40 percent but greater than or equal to 30 percent.

(6) *State agency notification requirements.* No later than April 15 of each school year, the State agency must notify the local educational agencies described in this paragraph about their community eligibility status. Each State agency must notify:

(i) Local educational agencies with an identified student percentage of at least 40 percent district wide, of the potential to participate in community eligibility in the subsequent year; the estimated cash assistance the local educational agency would receive; and the procedures to participate in community eligibility.

(ii) Local educational agencies with an identified student percentage that is less than 40 percent district wide but greater than or equal to 30 percent, that they may be eligible to participate in community eligibility in the subsequent year if they meet the eligibility requirements set forth in paragraph (f)(3) of this section as of April 1.

(iii) Local educational agencies currently using community eligibility district wide, of the options available in establishing claiming percentages for next school year.

(iv) Local educational agencies currently in year 4 with an identified student percentage district wide that is less than 40 percent but greater than or equal to 30 percent, of the grace year eligibility.

(7) *Public notification requirements.* By May 1 of each school year, the State agency must make the following information readily accessible on its Web site in a format prescribed by FNS:

(i) The names of schools identified in paragraph (f)(5) of this section, grouped as follows: Schools with an identified student percentage of least 40 percent, schools with an identified student percentage of less than 40 percent but greater than or equal to 30 percent, and schools currently in year 4 of the community eligibility provision with an identified student percentage that is less than 40 percent but greater than or equal to 30 percent.

(ii) The names of local educational agencies receiving State agency notification as required under paragraph (f)(6) of this section, grouped as follows: Local educational agencies with an identified student percentage of at least 40 percent district wide, local educational agencies with an identified student percentage that is less than 40 percent district wide but greater than or equal to 30 percent, local educational agencies currently using community eligibility district wide, and local educational agencies currently in year 4 with an identified student percentage district wide that is less than 40 percent but greater than or equal to 30 percent.

(iii) The State agency must maintain eligibility lists as described in paragraphs (i) and (ii) of this section until such time as new lists are made available annually by May 1.

(8) *Notification data.* For purposes of fulfilling the requirements in paragraphs (f)(5) and (6) of this section, the State agency must:

(i) Obtain data representative of the current school year, and

(ii) Use the identified student percentage as defined in paragraph (f)(1) of this section. If school-specific identified student percentage data are not readily available by school, use direct certifications as a percentage of enrolled students, *i.e.,* the percentage derived by dividing the number of students directly certified under § 245.6(b) by the number of enrolled students as defined in paragraph (f)(1) as an indicator of potential eligibility. If direct certification data are used, the State agency must clearly indicate that the data provided does not fully reflect the number of identified students.

(iii) If data are not as of April 1 of the current school year, ensure the data includes a notation that the data are intended for informational purposes and do not confer eligibility for community eligibility. Local educational agencies must meet the eligibility requirements specified in paragraph (f)(3) of this section to participate in community eligibility.

(9) *Other uses of the free claiming percentage.* For purposes of determining a school's or site's eligibility to participate in a Child Nutrition Program, a community eligibility provision school's free claiming percentage, *i.e.,* the product of the school's identified student percentage multiplied by 1.6, serves as a proxy for free and reduced price certification data.

(g) *Policy statement requirement.* A local educational agency that elects to participate in the special assistance provisions or the community eligibility provision set forth in this section must:

(1) Amend its Free and Reduced Price Policy Statement, specified in § 245.10 of this part, to include a list of all schools participating in each of the special assistance provisions specified in this section. The following information must also be included for each school:

(i) The initial school year of implementing the special assistance provision;

(ii) The school years the cycle is expected to remain in effect;

(iii) The school year the special assistance provision must be reconsidered; and

(iv) The available and approved data that will be used in reconsideration, as applicable.

(2) Certify that the school(s) meet the criteria for participating in each of the special assistance provisions, as specified in paragraphs (a), (b), (c), (d), (e) or (f) of this section, as appropriate.

(h) *Recordkeeping.* Local educational agencies that elect to participate in the special assistance provisions set forth in this section must retain implementation records for each of the participating schools. Failure to maintain sufficient records will result in the State agency requiring the school to return to standard meal counting and claiming procedures and/or fiscal action. Recordkeeping requirements include, as applicable:

(1) *Base year records.* A school food authority shall ensure that records as specified in §§ 210.15(b) and 220.7(e) of this chapter which support subsequent year earnings are retained for the base year for schools under Provision 2 and Provision 3. In addition, records of enrollment data for the base year must be retained for schools under Provision 3. Such base year records must be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed the base year data. School food authorities that conduct a streamlined base year must retain all records related to the statistical methodology and the determination of claiming percentages. Such records shall be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed the streamlined base year data. In either case, if audit findings have not been resolved, base year records must be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

(2) *Non-base year records.* School food authorities that are granted an extension of a provision must retain records of the available and approved socioeconomic data which is used to determine the income level of the school's population for the base year and year(s) in which extension(s) are made. In addition, State agencies must also retain records of the available and approved socioeconomic data which is used to determine the income level of the school's population for the base year and year(s) in which extensions are made. Such records must be retained at both the school food authority level and at the State agency during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last monthly Claim for Reimbursement which employed base year data. If audit findings have not been resolved, records must be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit. In addition, for schools operating under Provision 2, a school food authority must retain non-base year records pertaining to total daily meal count information, edit checks and on-site review documentation. For schools operating under Provision 3, a school food authority must retain non-base year records pertaining to total daily meal count information, the system of oversight or edit checks, on-site review documentation, annual enrollment data and the number of operating days, which are used to adjust the level of assistance. Such records shall be retained for three years after submission of the final monthly Claim for Reimbursement for the fiscal year.

(3) *Records for the community eligibility provision.* Local educational agencies must ensure records are maintained, including: data used to calculate the identified student percentage, annual selection of the identified student percentage, total number of breakfasts and lunches served daily, percentages used to claim meal reimbursement, non-Federal funding sources used to cover any excess meal costs, and school-level information provided to the State agency for publication, if applicable. Documentation must be made available at any reasonable time for review and audit purposes. Such records shall be retained during the period the community eligibility provision is in effect, including all extensions, plus three fiscal years after the submission of the last Claim for Reimbursement which was based on the data. In any case, if audit findings have not been resolved, these records must be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit.

(i) *Availability of documentation.* Upon request, the local educational agency must make documentation available for review or audit to document compliance with the requirements of this section. Depending on the certification or reimbursement alternative used, such documentation includes, but is not limited to, enrollment data, participation data, identified student percentages, available and approved socioeconomic data that was used to grant an extension, if applicable, or other data. In addition, upon request from FNS, local educational agencies under Provision 2 or Provision 3, or State agencies must submit to FNS all data and documentation used in granting extensions including documentation as specified in paragraphs (c) and (e) of this section. Data used to establish a new cycle for the community eligibility provision must also be available for review.

(j) *Restoring standard meal counting and claiming.* Under Provisions 1, 2, or 3 or community eligibility provision, a local educational agency may restore a school to standard notification, certification, and counting and claiming procedures at any time during the school year or for the following school year if standard procedures better suit the school's program needs. If standard procedures are restored during a school year, the local educational agency must offer all students reimbursable, free meals for a period of at least 30 operating days following the date of restoration of standard procedures or until a new eligibility determination is made, whichever comes first. Prior to the change taking place, but no later than June 30, the local educational agency must:

(1) Notify the State agency of the intention to stop participating in a special assistance certification and reimbursement alternative under this section and seek State agency guidance and review regarding the restoration of standard operating procedures.

(2) Notify the public and meet the certification and verification requirements of §§ 245.6 and 245.6a in affected schools.

(k) *Puerto Rico and Virgin Islands.* A local educational agency in Puerto Rico and the Virgin Islands, where a statistical survey procedure is permitted in lieu of eligibility determinations for each child, may: Maintain their standard procedures in accordance with § 245.4, select Provision 2 or Provision 3, or elect the community eligibility provision provided the applicable eligibility requirements as set forth in paragraphs (a) through (f) of this section are met. For the community eligibility provision, current direct certification data must be available to determine the identified student percentage.

(l) *Transferring eligibility for free meals during the school year.* For student transfers during the school year within a local educational agency, a student's access to free, reimbursable meals under the special assistance certification and reimbursement alternatives specified in this section must be extended by a receiving school using standard counting and claiming procedures for up to 10 operating school days or until a new eligibility determination for the current school year is made, whichever comes first. For student transfers between local educational agencies, this requirement applies not later than July 1, 2019. At the State agency's discretion, students who transfer within or between local educational agencies may be offered free reimbursable meals for up to 30 operating days or until a new eligibility determination for the current school year is made, whichever comes first.

* * * * *

■ 4. In § 245.13, revise paragraph (c)(3) to read as follows:

§ 245.13 State agencies and direct certification requirements.

* * * * *

(c) * * *

(3) *Data Element #3*—The count of the number of children who are members of households receiving assistance under SNAP who attend a school operating under the provisions of 7 CFR 245.9 in a year other than the base year or that is exercising the community eligibility provision (CEP). The proxy for this data element must be established each school year through the State's data matching efforts between SNAP records and student enrollment records for these special provision schools that are operating in a non-base year or that are exercising the CEP. Such matching efforts must occur in or close to October each year, but no later than the last operating day in October. However, States that have special provision schools exercising the CEP may alternatively choose to include, for these schools, the count from the SNAP match conducted as of April 1 of the same calendar year, whether or not it was used in the CEP claiming percentages. State agencies must report this aggregated data element to FNS by December 1 each year, in accordance with guidelines provided by FNS.

* * * * *

Dated: June 13, 2016.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2016–17232 Filed 7–28–16; 8:45 am]

BILLING CODE 3410–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Friday,
No. 146 July 29, 2016

Part IV

Securities and Exchange Commission

17 CFR Part 201
Amendments to the Commission's Rules of Practice; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release No. 34–78319; File No. S7–18–15]

RIN 3235–AL87

Amendments to the Commission's Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to its Rules of Practice. These changes concern, among other things, the timing of hearings in administrative proceedings, depositions, summary disposition, and the contents of an answer.

DATES: *Effective Date:* The final rules are effective September 27, 2016.

Applicability Dates: The applicability dates for proceedings pending as of July 13, 2016, are discussed in Section Q of this release.

FOR FURTHER INFORMATION CONTACT: Adela Choi, Senior Counsel, and Sarit Klein, Attorney Advisor, Office of the General Counsel, (202) 551–5150, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rules 141, 154, 161, 180, 220, 221, 222, 230, 232, 233, 234, 235, 250, 320, 360, 410, 411, 420, 440, 450 and 900 of its Rules of Practice [17 CFR 201.141, 201.154, 201.161, 201.180, 201.220, 201.221, 201.222, 201.230, 201.232, 201.233, 201.234, 201.235, 201.250, 201.320, 201.360, 201.410, 201.411, 201.420, 201.440, 201.450 and 201.900].

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I. Introduction

On September 24, 2015, the Commission proposed for comment amendments to its Rules of Practice. Among other things, we proposed to update the Rules of Practice, adjust the timing of hearings and other deadlines in administrative proceedings, and provide parties in administrative proceedings with the ability to take depositions.[1] We also proposed to clarify and amend certain other rules, including the admissibility of hearsay and the requirements for the contents of an answer. In addition, we proposed amendments to certain procedures that govern appeals to the Commission. The proposed amendments were intended to update the Rules of Practice and introduce additional flexibility into administrative proceedings, while continuing to provide for the timely and efficient disposition of proceedings.[2]

We received 13 comment letters in response to the proposal.[3] Commenters generally supported the Commission's efforts to update the rules, expand the discovery process and enlarge the timetables in administrative proceedings, and in some instances suggested additional changes. Some commenters argued that the proposed amendments were too incremental.[4] Others focused on the legitimacy of the Commission's administrative forum, and in so doing offered suggestions that went beyond the scope of the proposed amendments.[5] After carefully considering the comments, we are adopting amendments to our Rules of Practice as described below.

II. Description of the Final Rules

As with the proposing release, we begin with a discussion of the amendments to Rule 360, which sets forth the framework and timing for the stages of an administrative proceeding. Next, we discuss Rule 233 governing depositions, followed by Rule 232, which prescribes standards for the issuance of subpoenas and motions to quash. The remaining rule amendments are discussed in numerical order.

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[1] *Amendments to the Commission's Rules of Practice,* Exchange Act Release No. 75976 (Sept. 24, 2015), 80 FR 60091 (Oct. 5, 2015), available at *https://www.gpo.gov/fdsys/pkg/FR-2015-10-05/pdf/2015-24707.pdf* (last visited July 8, 2016).

[2] Promoting timeliness and efficiency in administrative proceedings has been a longstanding goal of the Commission. *See Rules of Practice,* Exchange Act Release No. 48018 (June 11, 2003), 68 FR 35787 (June 17, 2003), available at *https://www.gpo.gov/fdsys/pkg/FR-2003-06-17/pdf/03-15262.pdf* (last visited July 8, 2016) ("*2003 Release*") (amending Rules of Practice "to improve the timeliness of [the Commission's] administrative proceedings"); *Rules of Practice,* Exchange Act Release No. 35833 (June 9, 1995), 60 FR 32738 (June 23, 1995), available at *https://www.gpo.gov/fdsys/pkg/FR-1995-06-23/pdf/95-14750.pdf* ("*1995 Release*") (last visited July 8, 2016) (amending Rules of Practice to "better facilitate full, fair and efficient proceedings . . ."); *see also id.,* 60 FR at 32753, Comment to Rule 161 ("Extensions of Time, Postponements and Adjournments") ("The rule requires the hearing officer to consider explicitly the efficient and timely administration of justice when determining whether to grant a postponement, adjournment or extension of time for filing of papers. The need for delay must be balanced against the need to bring each case to a timely conclusion, consistent with the public interest.").

[3] The comment letters are located at *http://www.sec.gov/comments/s7-18-15/s71815.shtml* (last visited July 8, 2016).

[4] *See, e.g.,* David M. Zornow, Christopher J. Gunther and Chad E. Silverman letter dated December 4, 2015 ("Zornow/Gunther/Silverman").

[5] These comments generally expressed opposition to the administrative forum. *See, e.g.,* Joseph A. Grundfest letter dated December 4, 2015 ("Grundfest") (recommending the adoption of a mechanism to allow respondents in certain cases to remove a proceeding filed administratively to federal court); *id.* (arguing that the ability to proceed in an administrative forum creates the possibility that the Commission will choose to shield controversial cases from the full scrutiny of federal district and appellate courts); Zornow/Gunther/Silverman (asserting that conflicts of interest preclude the Commission from being perceived as a neutral arbiter). Because these comments are outside the scope of the proposed amendments, we have not addressed them in the adopting release.

A. Rule 360 (Initial Decision of Hearing Officer and Timing of Hearing)

1. Proposed Rule

Rule 360[6] governs the time period for the filing of an initial decision by the hearing officer and establishes the timing for the stages of an administrative proceeding, which include a prehearing period, a hearing, a period for reviewing hearing transcripts and submitting post-hearing briefs, and a deadline for the hearing officer to file an initial decision with the Office of the Secretary of the Commission (the "Secretary"). Rule 360(a)(2) currently designates the timeframes for each of these stages based on the date of service of an order instituting proceedings ("OIP"). Initial decisions must be filed within the number of days prescribed by the Commission in the OIP: 120, 210, or 300 days from the date of service of the OIP. The prehearing period, start date of the hearing, and period for review of the transcript and post-hearing briefing are, in turn, determined by the date of the OIP and time periods corresponding to the applicable initial decision deadline. Should the hearing officer determine that it is not possible to issue the initial decision within the period specified in the OIP, the Chief Administrative Law Judge is authorized, under current Rule 360(a)(3), to request an extension of time from the Commission.

We proposed to modify three aspects of the timing of a proceeding under Rule 360. First, the proposal modifies the calculation of the initial decision deadline by changing the trigger date for the time to file an initial decision from the OIP service date to the date of completion of post-hearing or dispositive motion briefing or a finding of a default. This modification divorces the deadline for the completion of an initial decision from other stages of the proceeding, and is reflected in an amendment separating current Rule 360(a)(2) into two paragraphs, proposed Rule 360(a)(2)(i) covering the initial decision deadline and proposed Rule 360(a)(2)(ii) covering the prehearing period. Under proposed Rule 360(a)(2)(i), the OIP designates the time period for preparation of the initial decision as 30, 75 or 120 days from the completion of post-hearing or dispositive motion briefing or a finding of a default.

Second, proposed Rule 360(a)(2)(ii) provides a range of time during which the hearing must begin. For proceedings with an initial decision deadline of 120 days, the proposal doubles the maximum length of the prehearing period from the current approximately four months to no more than eight months after service of the OIP. Pursuant to the proposal, under the 75-day timeline, the hearing would begin approximately two and one-half months (but not more than six months) from the date of service of the OIP, and for 30-day proceedings, the hearing would begin approximately one month (but no more than four months) from the date of service of the OIP. Consistent with current practice, the hearing officer would issue an order setting the hearing dates following a prehearing conference with the parties pursuant to Rule 221. The proposed extensions of time were designed to accommodate deposition discovery in 120-day cases and generally allow for additional time for prehearing preparation and review of documents, while retaining an outer time limit to promote timely and efficient resolution of the proceedings.

Proposed Rule 360(a)(2)(ii), like current Rule 360(a)(2), contemplated an initial schedule allowing approximately two months for review of transcripts and submission of post-hearing briefs.

Third, the proposal adds a procedure for the hearing officer to extend the initial decision deadline. Under proposed Rule 360(a)(3)(ii), the hearing officer is permitted to certify to the Commission the need to extend the initial decision deadline by up to 30 days for case management purposes. This certification must be issued at least 30 days before the expiration of the initial decision deadline, and the proposed extension would take effect absent a Commission order to the contrary issued within 14 days after it receives the certification.

2. Comments Received

Commenters generally supported extensions of the prehearing period under Rule 360, but some suggested that longer or more flexible periods be adopted. Several commenters advocated longer prehearing periods of, for instance, twelve months or eighteen months,[7] and one commenter argued against any "pre-determined limit[s]" on the timing of proceedings.[8] A number of commenters argued that hearing officers should be given the discretion to set the prehearing period or to authorize extensions of the period on a case-by-case basis.[9] Several commenters suggested alternative methods for calculating the prehearing period, for instance, based on the length of the Division of Enforcement (the "Division") investigation[10] or the date the Division completes production of the investigative file.[11]

In urging longer prehearing periods, commenters argued that respondents need longer discovery periods to review and address evidence gathered by the Division during the investigation that precedes the institution of proceedings. These commenters generally cited the size of the Division's investigative files (including electronic document productions) to be reviewed by respondents during the period, the time required for respondents to receive the complete investigative file during the prehearing period, and the need to counter lengthy and extensive Division investigations.[12] Commenters also offered comparisons to the length of discovery and flexible scheduling procedures in federal courts and in the administrative proceedings of some other agencies.[13]

Most commenters who addressed this proposed rule focused on the maximum prehearing period for proceedings designated as 120-day matters. But one commenter urged further extensions to the prehearing period for all administrative proceedings and to other time periods designated under Rule 360(a)(2)(ii).[14] This commenter supported the proposal to divorce the deadline for the initial decision from the other stages of the proceeding but argued that the Commission should extend the period for post-hearing briefing to three months, rather than the two months allocated under both the current and proposed rules. The commenter also suggested modifying the certification process for 30-day extensions under Rule 360 to require the hearing officer's certification to be issued 45 or 60 days before the deadline, and an order from the Commission expressly granting or rejecting the proposed extension.[15]

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[6] 17 CFR 201.360.

[7] *See, e.g.,* Financial Services Roundtable letter dated December 4, 2015 ("FSR"); New Jersey State Bar Association letter dated December 1, 2015 ("NJSBA").

[8] *See* Zornow/Gunther/Silverman.

[9] *See, e.g.,* Susan E. Brune letter dated November 24, 2015 ("Brune"); Grundfest; Calfee, Halter & Griswold, LLP letter dated November 30, 2015 ("Calfee"); Gibson, Dunn & Crutcher LLP letter dated December 4, 2015 ("Gibson").

[10] *See* Stephen E. Hudson letter dated December 3, 2015 ("Hudson I").

[11] *See* Gibson; Calfee.

[12] *See, e.g.,* Navistar International Corporation letter dated December 3, 2015 ("Navistar").

[13] *See* Brune; Gibson; Navistar.

[14] NJSBA.

[15] *Id.*

3. Final Rule

We are adopting Rule 360(a)(2)(i) substantially as proposed, with non-substantive modifications intended to clarify that multiple events (*i.e.*, completion of post-hearing briefing where a hearing has been completed, completion of briefing on a dispositive motion where there is no hearing, or the determination of a default) may trigger the running of the 30, 75 or 120-day deadline for the initial decision.[16]

In addition, we believe it is appropriate, consistent with the view of commenters suggesting a longer prehearing period under the 120-day timeline, to modify the proposed amendments to Rule 360(a)(2)(ii) to extend by an additional two months the maximum prehearing period for proceedings in this category. As adopted, Rule 360(a)(2)(ii) provides that under the 120-day timeline, the hearing officer shall issue an order scheduling the hearing to begin approximately four months (but no more than ten months, instead of the proposed eight) from the date of service of the OIP.[17] The longer prehearing period is intended to provide parties, in appropriate cases, additional time to review the investigative record, conduct depositions under amended Rule 233, and prepare for a hearing.[18]

While we recognize that some might view the maximum ten-month prehearing period as not long enough, the Commission believes that the final rule strikes the appropriate balance between the time needed to conduct discovery and prepare for a hearing and the Commission's goal of timely and efficiently resolving administrative proceedings.

In response to commenters urging open-ended prehearing periods as determined by hearing officers, we note that the Commission amended Rule 360 in 2003 to impose mandatory deadlines for completion of initial decisions because of concerns about adherence to the Rule's then-existing non-binding goals.[19] We continue to believe that timely completion of proceedings can be achieved more successfully with express deadlines for completion of the various steps in the administrative proceeding. In designating timeframes for proceedings in the OIP, the Commission considers "the nature, complexity, and urgency of the subject matter," with due regard for the public interest and the protection of investors.[20]

We are amending Rule 360(a)(2)(ii) in one additional respect to resolve an apparent discrepancy with existing Rule 340, which governs the timeframes for filing post-hearing briefs. Specifically, we are amending Rule 360(a)(2)(ii) to remove the approximately two-month timeframe for obtaining transcripts and submitting post-hearing briefs. The Commission included these internal timeframes when it amended Rule 360 in 2003 to address concerns that setting only an outside deadline for the issuance of an initial decision by the hearing officer could incentivize the hearing officer to curtail the parties' prehearing preparation time and post-hearing briefing time while reserving the majority of the overall time period for the hearing officer to draft the initial decision.[21] This should not be a concern under amended Rule 360, because under the amended rule the deadline for filing the initial decision is triggered not by the date of service of the OIP, but by the completion of post-hearing briefing (or, if there is no hearing, the completion of briefing on a dispositive motion or the determination of a default). The "approximately 2-month" language contained in current and proposed Rule 360 for submission of post-hearing briefs also may create unnecessary ambiguity in the post-hearing briefing requirements set forth in Rule 340, which provides that the hearing officer shall by order set the deadlines for post-hearing briefing for a period that shall not exceed 90 days after the close of the hearing, unless the hearing officer, for good cause shown, permits a different period.[22]

We are adopting Rule 360(a)(2)(ii) as proposed with respect to the scheduling of hearings in 75-day and 30-day proceedings, with a conforming change to remove the approximate timeframes set forth in the rule for obtaining a transcript and submitting post-hearing briefs, for the reasons discussed above. The final amendment provides for an outer limit of six months for the hearing to commence under the 75-day timeline, and an outer limit of four months for the hearing to commence in 30-day proceedings. Proceedings in the 75-day category typically involve "follow-on" proceedings following certain injunctions or criminal convictions.[23] The 30-day designation typically is reserved for proceedings under Section 12(j) of the Exchange Act.[24] We continue to believe that the proposed prehearing periods for these cases is appropriate since they are by their nature more routine than 120-day proceedings, and are sometimes uncontested. We therefore believe that the prehearing periods for these cases, which we are adopting as proposed, will provide adequate preparation time for the parties while balancing the need for efficient resolution of administrative proceedings.

We are adopting Rule 360(a)(3) as proposed. The final rule permits the hearing officer presiding over the proceeding to certify to the Commission a need to extend the initial decision deadline by up to 30 days for case management purposes. This certification must be issued no later than 30 days prior to the expiration of the initial decision deadline. One commenter supported the proposed certification procedure but suggested requiring the certification to be issued 45 or 60 days prior to the expiration of the initial decision deadline. The Commission continues to believe that a 30-day period provides sufficient notice to the parties of the hearing officer's certification. In response to the comment suggesting the Commission issue an order expressly granting or rejecting the hearing officer's proposed extension, we do not believe this added procedure is necessary. As adopted, the rule provides that if the Commission has not issued an order to the contrary within 14 days after receiving the certification, the extension sought in the hearing officer's certification shall take effect. In the Commission's view, the final rule provides sufficient clarity on whether the proposed extension has been granted.

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[16] We emphasize that, as provided for in current Rule 360(a)(1), unless the Commission directs otherwise, the hearing officer shall prepare an initial decision in any proceeding in which the Commission directs a hearing officer to preside at a hearing, provided, however, that an initial decision may be waived by the parties with the consent of the hearing officer pursuant to Rule 202.

[17] The prehearing periods in this rule do not affect the statutory hearing requirements in cease-and-desist proceedings. In such proceedings, the Commission is required to set a hearing date not earlier than 30 days nor later than 60 days after service of the OIP, unless an earlier or later date is set by the Commission with the consent of any respondent so served. *See, e.g.,* Securities Exchange Act of 1934 ("Exchange Act") Section 21C(b), 15 U.S.C. 78u–3(b).

[18] By lengthening the prehearing period, the Commission does not suggest that every 120-day matter will qualify for the maximum ten-month period. Proceedings designated for the 120-day timeline will range from routine matters involving a single violation of the securities laws to matters involving, for example, multiple and distinct alleged violations, a particularly voluminous investigative record, or a complex set of factual allegations. In setting the hearing date, the hearing officer should assess whether the proceeding at issue warrants the maximum prehearing period or whether a shorter prehearing period would provide the parties with adequate preparation time. In keeping with the goal of resolving administrative proceedings in an expeditious manner, the maximum prehearing period should be the exception rather than the norm.

[19] *See 2003 Release,* 68 FR at 35787.

[20] 17 CFR 201.360(a)(2)(i).

[21] *See 2003 Release,* 68 FR at 35787.

[22] We did not propose, and are not now amending, Rule 340. However, given that one of the overall purposes of these amendments is to promote efficiency in the adjudication of administrative proceedings, the "good cause" standard for granting extensions beyond the 90-day timeframe set forth in Rule 340 should continue to be rarely granted, limited to truly unusual circumstances, and not introduce undue delay in the resolution of proceedings.

[23] The Commission is authorized to institute administrative proceedings following certain injunctions or convictions of persons associated with or seeking to associate in the securities industry. *See, e.g.,* Exchange Act Section 15(b), 15 U.S.C. 78o(b); Section 203(f) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–3(f).

[24] Section 12(j) of the Exchange Act authorizes the Commission, among other things, to revoke the registration of a security if the issuer fails to comply with the federal securities laws. *See* 15 U.S.C. 78l(j).

B. Rule 233 (Depositions Upon Oral Examination)

1. Proposed Rule

Current Rule 233 permits any party to move for permission to take the deposition of a witness who likely will be unavailable to attend or testify at the hearing. We proposed to amend Rule 233 to permit a limited number of additional depositions. As proposed, amended Rule 233 permits the respondent and the Division in a single-respondent proceeding designated as a 120-day proceeding each to notice the depositions of three persons. In a multi-respondent 120-day proceeding, the Division is permitted to notice five depositions, and the respondents collectively can also notice five depositions. Under the proposal, the parties could also request that the hearing officer issue a subpoena for documents in conjunction with the deposition. Proposed Rule 233 also sets forth procedures for deposition practice, including a six-hour time limit for depositions, contents of the notice of deposition, and other matters.

2. Comments Received

Most commenters urged that the final rule provide respondents the ability to conduct more depositions than the Commission proposed. Commenters appeared to be animated by two principal concerns. First, commenters believed that the Commission's proposal to limit parties to a fixed number of depositions did not accommodate respondents' potential need for additional depositions depending on the facts and circumstances of the individual case, particularly in complex or multi-party proceedings.[25] Second, commenters argued that the Division's investigation before the Commission initiates proceedings creates an information imbalance that warrants providing respondents with additional opportunities to conduct depositions.[26]

Commenters suggested a variety of possible parameters for additional depositions. Most commenters urged that hearing officers be granted discretion to approve requests for additional depositions, similar to the practice under Rule 30 of the Federal Rules of Civil Procedure.[27] Commenters criticized the "one size fits all" approach of the proposed rule,[28] and argued that hearing officer discretion in the matter of depositions is necessary because each case presents unique facts and circumstances. Three commenters suggested guidelines for exercising such discretion based on limitations found in Rule 26 of the Federal Rules of Civil Procedure.[29]

Commenters differed on the number of depositions they believed the rule should permit as a matter of right (*i.e.*, before a party would be required to seek leave from the hearing officer to notice the deposition). A number of commenters pointed the Commission to Rule 30(a)(2) of the Federal Rules of Civil Procedure as an appropriate model.[30] Rule 30(a)(2) requires leave of court for a deposition if the deposition would result in plaintiffs as a group or defendants as a group taking more than ten depositions.[31] Two of these commenters further urged that ten depositions be permitted to each party[32] or each respondent,[33] rather than to each side. One commenter suggested five depositions for each respondent in either a single-respondent or multi-respondent proceeding as an appropriate starting point, coupled with hearing officer discretion to enlarge the number.[34]

Three commenters supported the Commission's proposal of three depositions in a single-respondent proceeding and five depositions in a multi-respondent proceeding, subject, again, to hearing officer discretion to enlarge the number, and with certain other caveats.[35] One of these commenters suggested that the three- and five-deposition limits proposed by the Commission should be limited to fact witnesses, and not include experts.[36] A second commenter proposed that hearing officers be required to grant a party in a single-respondent proceeding leave to take more than three depositions, and a party in a multi-respondent proceeding leave to take more than five depositions.[37] Another of these commenters added that that the Division should not be permitted to notice any depositions at all.[38] Two commenters urged that the rule not set any predetermined limits, but rather that the number of depositions be left entirely to the discretion of the hearing officer.[39]

A number of commenters took issue with the Commission's proposal that the respondents in a multi-respondent proceeding share a fixed number of depositions.[40] These commenters generally argued that, because respondents may have divergent interests, each respondent should be entitled to take the same number of depositions.[41] In addition, several commenters—citing the ability of the Division to develop an extensive investigative record before the initiation of the proceeding—argued that the Division should not be permitted to take any depositions, or that its right to do so should be limited in various ways.[42]

Finally, two commenters urged that the Commission permit seven hours for each deposition, consistent with the practice in federal courts, rather than the proposed six hours.[43]

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[25] Center for Capital Market Competitiveness, U.S. Chamber of Commerce letter dated December 4, 2015 ("CCMC"); Calfee; NJSBA; Navistar; Hudson I; Zornow/Gunther/Silverman; FSR; Gibson; Grundfest.

[26] Aegis J. Frumento and Stephanie Korenman letter dated December 4, 2015 ("Frumento/Korenman"); Brune; Navistar; Hudson I; Zornow/Gunther/Silverman; FSR; CCMC.

[27] Brune; Calfee; NJSBA; Navistar; Hudson I; Gibson; Frumento/Korenman; CCMC. One of these commenters further pointed out that the adjudication rules of the Federal Trade Commission do not limit the number of discovery depositions. Gibson (citing 16 CFR 3.31(a)). However, one commenter believed that a limit of ten depositions per party would be reasonable. FSR.

[28] Stephen E. Hudson letter dated December 4, 2015 ("Hudson II", incorporating anonymous blog); Zornow/Gunther/Silverman.

[29] NJSBA (citing Fed.R.Civ.P. 26(b)(2)(C)); Hudson I (same); Gibson (citing Fed.R.Civ.P. 26(b)(1)).

[30] Brune; Navistar; Hudson I; FSR; CCMC.

[31] Fed.R.Civ.P. 30(a)(2)(A)(i).

[32] FSR.

[33] CCMC.

[34] Gibson.

[35] Calfee; NJSBA; Frumento/Korenman.

[36] Calfee; *see also* CCMC (proposing ten depositions of right for each respondent, not including expert depositions, which would be separately authorized by the hearing officer).

[37] NJSBA.

[38] Frumento/Korenman.

[39] Zornow/Gunther/Silverman; Grundfest.

[40] Calfee; Hudson II (incorporating anonymous blog); FSR; Gibson; CCMC.

[41] FSR; CCMC.

[42] Brune (Division should be permitted to depose only respondents' experts, or fact witnesses with leave); Hudson I (same); FSR (Division should not be able to depose witnesses whose testimony was taken during the investigation); Frumento/Korenman (no depositions at all for Division); CCMC (Division should only be permitted to take depositions based upon proffer to hearing officer explaining why the staff were unable to take testimony during the investigation, or that the deposition is needed because of new information obtained after the completion of the investigation).

[43] Calfee; FSR; *see* Fed.R.Civ.P. 30(c).

3. Final Rule

We are adopting the proposed amendments to Rule 233 with certain modifications. The proposed amendments to Rule 233, in conjunction with increasing the maximum prehearing time period under Rule 360, were intended to provide parties with the potential benefits of deposition discovery without sacrificing the public interest or the Commission's goal of resolving administrative proceedings promptly and efficiently. We have weighed commenters' concerns against the need to maintain this balance.

There are sound justifications for limiting the availability of depositions in Commission administrative proceedings as compared with litigation under the Federal Rules of Civil Procedure. Typically, in a federal civil action a complaint is filed, and, because neither party can compel testimony prior to the filing of the complaint, oral depositions thereafter play a critical role in gathering preliminary and background discovery, in addition to gathering evidence for use at trial. However, in a Commission enforcement action, the complaint (in a federal court action) or the OIP (in an administrative proceeding) is premised on an evidentiary record developed through the staff's pre-filing investigation. The Division produces to respondents various materials from the investigative file—*i.e.*, non-privileged documents gathered by the Division, transcripts of investigative testimony, and disclosure of material, exculpatory facts (*Brady* material)—that provide significant guidance to respondents in determining the most important witnesses to depose.[44] Thus, as some commenters appeared to acknowledge, a principal goal of oral depositions in our administrative proceedings would be to supplement the record, not create it.[45] Given these different starting points, the fact that rules that govern discovery in federal court also apply to Commission federal court enforcement actions does not provide a compelling reason for incorporating the same deposition discovery rules into our administrative practice, in particular given the Commission's strong interest in establishing a timely and efficient administrative forum.[46] Accordingly, we do not agree with commenters who advocated further expanding the proposed oral deposition rights in our administrative proceedings commensurate with Rule 30 of the Federal Rules of Civil Procedure, including ten depositions per side (or per party) as of right.

At the same time we recognize, as many commenters noted, that some cases may present unique issues or challenges that warrant affording the parties additional opportunities to conduct prehearing depositions. While the Commission's expectation is that such circumstances will rarely be present, we agree that our rules should be flexible enough to accommodate reasonable requests for a limited number of additional depositions. For this reason, the final rule includes a new provision, Rule 233(a)(3), that permits either side to move the hearing officer for leave to notice up to two additional depositions.

Paragraphs (a)(1) and (2) of amended Rule 233 retain the proposed rule's limitations on depositions as a matter of right. They provide that, in a single-respondent proceeding under the 120-day timeframe set forth in Rule 360, the respondent and the Division may each file written notices to depose up to three persons; and, in a multi-respondent 120-day proceeding, the respondents collectively may file joint written notices to depose up to five persons and the Division may file written notices to depose up to five persons.[47] However, because we are persuaded that a seven-hour limit to depositions, rather than the six-hour limit we proposed, balances the Commission's goal of timely and efficient administrative proceedings and the benefits of allowing parties more time to depose witnesses, we have revised paragraph (j)(1) of Rule 233 to provide for a seven-hour limit to depositions.[48] Amended paragraph (a)(5) further makes clear that the fact that a witness testified during an investigation does not preclude the deposition of that witness.[49]

The final rule limits depositions to 120-day proceedings as proposed. Thus, parties will not be permitted to notice depositions in proceedings where the initial decision is placed on either the 30- or 75-day timeline under amended Rule 360. As adopted, Rule 360 provides for the hearing in proceedings placed on the 120-day timeline to commence between four and ten months from the date of service of the OIP. We anticipate that this extended period will provide sufficient time for parties to take the allotted number of depositions, along with any additional depositions that may be permitted under new paragraph (a)(3) of the Rule (discussed below), and to complete their other prehearing preparation. Further, as discussed below, and as reflected in amended Rule 221, we expect that the depositions each party plans to notice, including the identities of the proposed deponents, will be one of the topics discussed at any initial prehearing conference.[50]

We disagree with commenters who urged that the Division not be permitted to notice depositions (or have its deposition rights limited) in view of the Division's ability to take investigative testimony before the proceedings are instituted. Investigative testimony generally is directed at ascertaining facts in order for the staff to determine whether to recommend that the Commission authorize an action for violations of the federal securities laws. Once the investigative record has been sifted through and the Commission has instituted an administrative proceeding, issues relevant to a claim or defense may become clarified and warrant new or additional focus in discovery.[51] Thus, the prehearing discovery context is sufficiently different from the investigation such that the Division should be entitled to the same discovery rights as respondents in order to prepare its case for the hearing.[52] Moreover, information gathered from depositions taken by the respondents might reveal the need for the Division to depose other persons. Also, in some instances, witnesses decline to answer questions in investigative testimony based upon assertion of attorney-client privilege or the Fifth Amendment, but those protections might no longer apply by the time of depositions in an administrative proceeding. Thus, many reasons support the need for the Division to have the same rights as respondents to conduct depositions.

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[44] Rule 230 requires early production by the Division of non-privileged documents and transcripts of testimony obtained during the investigation. Under Rule 230, which incorporates certain criminal process rights derived from criminal cases and statutes, respondents receive documents that contain material exculpatory evidence under *Brady* v. *Maryland*, 373 U.S. 83, 87 (1963). No analogous provision is present in the Federal Rules of Civil Procedure.

[45] *See* Brune (transcripts of investigative testimony "can reflect no meaningful exploration of important areas. . . ."); Hudson I (same); FSR ("[R]espondents did not have an opportunity to ask [investigative] witnesses questions or to choose which witnesses to examine.").

[46] *See supra* note 2. In response to the commenter who also pointed us to the adjudication rules of the FTC, we note that agency practice is varied on this issue. *See* Gibson. A number of agencies do not permit prehearing discovery depositions except with respect to witnesses who will be unavailable at the hearing. *See, e.g.*, 12 CFR 1081.209 and 77 FR 39057, 39073 (June 29, 2012) (Consumer Financial Protection Bureau); 17 CFR 10.44 and 41 FR 2508, 2509 (Jan. 16, 1976) (Commodity Futures Trading Commission); 12 CFR 308.27 (Federal Deposit Insurance Corporation).

[47] Federal Rule of Civil Procedure 30(a)(2)(A) similarly sets a deposition limit per side, not per party. *See* 8A Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure* section 2104 (3d ed.).

[48] This is consistent with the Federal Rules of Civil Procedure. *See* Fed.R.Civ.P. 30(d)(1).

[49] This provision has been renumbered from the proposed rule, where it was numbered paragraph (a)(4).

[50] *See infra* discussion at section H.

[51] As just one example, the Commission's experience has been that issues relating to possible reliance on professionals are not always clarified during the investigation. Today the Commission is also amending Rule 220 to require that respondents state in an answer whether they relied on professionals. This early statement will enable the Division to consider this issue in formulating its deposition plan.

New paragraph (a)(3) of amended Rule 233 permits the hearing officer in a 120-day proceeding to grant either side leave to take up to two additional depositions beyond those permitted under paragraphs (a)(1) and (2). This means that, in proceedings involving a single respondent, the hearing officer may permit up to a maximum of five depositions for the respondent and five depositions for the Division. In proceedings involving multiple respondents, the hearing officer may permit up to a maximum of seven depositions for all respondents, collectively, and seven depositions for the Division.

Paragraph (a)(3) is intended to permit a limited number of additional depositions in compelling circumstances without significantly increasing the burdens for all the parties or undermining the goal of providing a prompt and efficient administrative forum. As discussed above, we have increased the prehearing period in 120-day proceedings to a maximum of ten months. As amended, Rule 233 will now permit parties to notice up to seven depositions of witnesses from among the categories set forth in amended Rule 232(e), compared with no depositions permitted under the current rule (except for witnesses likely to be unavailable at the hearing). We believe that these new deposition opportunities will afford respondents and the Division additional opportunities to develop the record without compromising the hearing schedule.

A motion for additional depositions under paragraph (a)(3) must be filed no later than 90 days prior to the hearing date. We anticipate that this deadline will give the parties sufficient time at the outset of a proceeding to identify additional witnesses they wish to depose, and to confer with other parties to determine whether they intend also to file a motion and, in a multi-respondent proceeding, whether there are any common putative deponents, before moving the hearing officer for leave. This deadline should also enable any motions to be resolved and additional depositions to be taken in a timely manner, consistent with the needs of the parties to prepare for the hearing.

To support a prompt determination on a motion for additional depositions, paragraph (a)(3)(i) establishes a simplified motion practice leading to an expedited decision from the hearing officer. Any party opposing the motion must file its opposition, if any, within five days; the motion and any oppositions are each limited to seven pages; and neither separate points and authorities nor replies are permitted.[53] The proceeding will not automatically be stayed during the pendency of a motion. Further, under paragraph (a)(3)(iii), if the moving party proposes to take the additional depositions upon written questions, as provided for in Rule 234, the motion must state that fact, and the written questions must be submitted with the motion for additional depositions.

Paragraph (a)(3)(ii) establishes two requirements for a grant of additional depositions. First, the additional depositions must satisfy the requirements of Rule 232(e). Amended Rule 232(e), among other things, requires the hearing officer, upon application, to quash or modify a deposition if the deposition would be unreasonable, oppressive, unduly burdensome, would unduly delay the hearing, or if the proposed deponent does not fall within one of the three categories of witnesses authorized for depositions under Rule 232(e)(3). By requiring that any additional depositions satisfy the requirements of Rule 232(e), we intend to incorporate the standards under that Rule into the motion practice under paragraph (a)(3); opposing parties do not need to file a separate application to quash.[54] However, for any depositions a party may take as a matter of right, the Commission or a hearing officer may quash such a deposition notice following the filing of a motion made pursuant to Rule 232(e).

If the requested additional depositions satisfy the threshold requirements of Rule 232(e), the moving side must also demonstrate that it has a compelling need to take the additional depositions. To make this showing the moving side must, in its motion, identify each witness that it intends to depose as of right and the additional witnesses that it seeks to depose; describe the role of each witness and each proposed additional witness; describe the matters concerning which each witness and each proposed additional witness is expected to be questioned and why each deposition is necessary to the side's arguments, claims, or defenses; and show that the additional depositions requested will not be cumulative or duplicative.

Paragraph (b) of amended Rule 233 retains the existing procedure whereby a party may seek leave of the hearing officer to take the deposition of a witness who will likely be unavailable to attend or testify at the hearing. A deposition granted under paragraph (b) does not count against the moving side's permissible number of depositions by right or additional depositions under paragraph (a). Nothing in the rules as amended changes the current practices or standards for obtaining leave to depose individuals under paragraph (b). As before, a deposition under Rule 233(b) is available only upon a showing that the prospective witness will likely give testimony that is material to the hearing; that it is likely the prospective witness will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment, other disability, or absence from the United States (unless it appears that absence of the witness was procured by the moving party); and that the taking of the deposition will serve the interests of justice. These standards should prevent this provision from being used as a means to circumvent the number of depositions allowed under Rule 233(a).

We received no comments on the remaining proposed amendments to Rule 233, with the exception, as noted above, of the six-hour length of depositions. The final rule changes this to seven hours.[55]

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[52] *See SEC* v. *Saul,* 133 FRD. 115 (N.D. Ill. 1990); *SEC* v. *Espuelas,* 699 F. Supp. 2d 655 (S.D.N.Y. 2010). "There is no authority which suggests that it is appropriate to limit the SEC's right to take discovery based upon the extent of its previous investigation into the facts underlying the case." *SEC* v. *Sargent,* 229 F.3d 68, 80 (1st Cir. 2000) (relying on *Saul*).

[53] We have made separate conforming amendments to Rule 154 (Motions), whereby the requirements of that rule do not apply where another rule expressly applies to a particular motion.

[54] This does not preclude proposed deponents or other persons described in Rule 232(e)(1) from filing an application under that rule to quash or modify a notice of deposition or a subpoena.

[55] We note that we have made certain other minor changes to this rule from the proposed rule, including: (1) Deleting the requirement that a notice of deposition describe the scope of the testimony to be taken; (2) requiring that each party bear its own transcription costs; (3) clarifying that the deposition officer must furnish a copy of the transcript to any party or the deponent, as directed by the party or person paying the charges; and (4) providing that any party may seek relief from the

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C. Amendments to Rule 232 (Subpoenas)

1. Proposed Rule

Current Rule 232 addresses the availability of, and standards for issuing, subpoenas requiring the attendance of witnesses at hearings and the production of documents. We proposed amendments to Rule 232 to correspond with the new provisions on depositions in Rule 233. As proposed, amended Rule 232(e)(1) permits a person who is subject to a deposition notice, or a party, to move to quash or modify the notice. This proposed amendment is intended to promote efficiency in the discovery process by allowing persons to move at the notice stage, rather than waiting for a party to request the issuance of a subpoena to compel attendance. Proposed paragraphs (e)(2) and (3) of the rule establish additional standards governing the hearing officer's decision on an application to quash or modify a notice of deposition or subpoena. Proposed paragraph (e)(2) adds undue delay of the hearing as a ground for quashing or modifying a deposition notice or subpoena (to the existing grounds that compliance would be unreasonable, oppressive, or unduly burdensome). This amendment requires the hearing officer or the Commission to consider the delaying effect of compliance with a subpoena or notice of deposition, and is intended to promote the efficient use of time for discovery during the prehearing period.

Proposed paragraph (e)(3) requires that the hearing officer or the Commission quash or modify the subpoena unless the requesting party demonstrates that the proposed deponent is a fact witness (except that those witnesses whose only knowledge of relevant facts arose from the Division's investigation or the proceeding may not be deposed), an expert witness designated pursuant to Rule 222(b), or a document custodian (except those Division or Commission personnel who have custody of documents or data that were produced by the Division to the respondent), and that the notice or subpoena otherwise satisfies the requirements of Rule 233(a). This provision is intended to foster use of depositions where appropriate and promote meaningful discovery, within the limits of the number of depositions provided per side pursuant to proposed Rule 233(a).

Proposed Rule 232(f) requires each party to pay the fees and expenses of its own expert witnesses.

2. Comments Received

One commenter submitted for our consideration several links to a securities blog that criticized many of the proposed changes to our Rules of Practice.[56] With respect to Rule 232, the author of the blog made two principal comments. The author took issue with the requirement of Rule 232 that a subpoena be issued by the hearing officer, as compared with Rule 45 of the Federal Rules of Civil Procedure, which permits parties to issue subpoenas without the judge acting as a "gatekeeper." The author asserted that hearing officers, "at the prodding of" the Division, permit only limited discovery in administrative proceedings, and criticized the proposed changes to Rule 232 for not addressing this situation. The author also objected to the requirement of proposed Rule 232(e)(3) that a subpoena be quashed or modified unless the requesting party demonstrates that the proposed deponent is a fact witness, an expert witness, or a document custodian. The author argued that, instead, respondents should be permitted to use their allotted number of depositions to notice persons they deem important to their defense irrespective of such limitations.

3. Final Rule

We are adopting amended Rule 232 substantially as proposed, with one change to correspond to changes we have made to Rule 220 ("Answer to Allegations"). As is discussed below, we have adopted an amendment to Rule 220 that requires respondents to state in the answer whether they relied on professionals. In conjunction with this change, we have amended Rule 232(e)(3)(i) to clarify that a proposed deponent may include a fact witness relative to any claim of the Division, any defense, or anything else required to be included in an answer pursuant to Rule 220(c).

With regard to the one comment referenced above, we note, first, that Rule 232 is based on Section 555(d) of the Administrative Procedure Act ("APA"),[57] which does not contemplate that parties to agency proceedings would themselves issue subpoenas.[58] The grounds for a hearing officer denying a request to issue a subpoena under Rule 232—that it is "unreasonable, oppressive, excessive in scope, or unduly burdensome"—are also consistent with well-established judicial standards,[59] and we have no evidence that hearing officers are not acting diligently and in good faith in their consideration of current requests for subpoenas, or that they would not do so in implementing the standards for quashing or modifying deposition subpoenas set forth under the amended rule.

Second, depositions impose costs and burdens not just on the party taking the deposition but on all other parties to the proceeding and upon the deponent. The proposed rule was based on the Commission's experience that fact witnesses, expert witnesses, and document custodians are the individuals most likely to have information relevant to the issues to be decided.[60] We are not aware of, nor did any commenter suggest, any other categories of witnesses whose deposition would be necessary in administrative proceedings. If there are instances in which a party requires the testimony of a witness who does not fit within the three categories to testify, the party may seek to call that witness at the hearing, either by voluntary appearance or by subpoena of the witness, if otherwise permitted under the Rules.

D. Rule 141 (Orders and Decisions; Service of Orders Instituting Proceedings and Other Orders and Decisions)

1. Proposed Rule

Rule 141(a)(2)(iv)[61] contains the requirements for serving an OIP on a person in a foreign country. The current rule allows for service of an OIP on persons in foreign countries by any method specified in the rule, or "by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country."

We proposed to amend this rule so that service reasonably calculated to give notice includes any method

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hearing officer with respect to disputes over the conduct of a deposition. These changes are generally intended to simplify the rule text or to clarify minor procedural matters.

[56] Hudson II.

[57] *1995 Release,* 60 FR at 32764.

[58] 5 U.S.C. 555(d); *Attorney General's Manual on the Administrative Procedure Act,* section 6(c) (1947) ("*Attorney General's Manual*").

[59] *Attorney General's Manual,* section 6(c) ("[A]gencies may refuse to issue to private parties subpoenas which appear to be so irrelevant or unreasonable that a court would refuse to enforce them."); *Wiwa* v. *Royal Dutch Petroleum Co.,* 392 F.3d 812 (5th Cir. 2004) (under Federal Rule of Civil Procedure 45, a court has the power to quash or modify a subpoena if it is unreasonable and oppressive, and subjects a party to undue burden).

[60] In contrast to Federal Rule of Civil Procedure 30(b)(6), neither current Rule 232(e)(3) nor Rule 233 permits depositions of a public or private corporation, partnership, association, governmental agency, or other entity. Such depositions are not permitted under the amended Rules of Practice.

[61] 17 CFR 201.141(a)(2)(iv).

authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; methods prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction; or as the foreign authority directs in response to a letter rogatory or letter of request. In addition, under the proposed rule, unless prohibited by the foreign country's law, service can be made by delivering a copy of the OIP to the individual personally, or using any form of mail that the Secretary or the interested division addresses and sends to the individual and that requires a signed receipt. The proposed rule also allows service by any other means not prohibited by international agreement, as the Commission or hearing officer orders. Like the similar provision in the Federal Rules of Civil Procedure, this provision covers situations where existing agreements do not apply, or efforts to serve under such agreements are or would be unsuccessful.

We also proposed to amend Rule 141(a)(3), which requires the Secretary to maintain a record of service on parties, to make clear that in instances where a division of the Commission (rather than the Secretary) serves an OIP, the division must file with the Secretary either an acknowledgement of service by the person served or proof of service.

2. Final Rule

We did not receive comments on this aspect of the proposal and are adopting the amendments as proposed. In addition to clarifying that proper service on persons in foreign countries may be made by any of the above methods, the rule provides certainty regarding whether service of an OIP has been effected properly and allows the Commission to rely on international agreements in which foreign countries have agreed to accept certain forms of service as valid. The final amendment provides that a division that serves an OIP must file with the Secretary either an acknowledgement of service by the person served or proof of service consisting of a statement by the person who made service certifying the date and manner of service; the names of the persons served; and their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

E. Rule 161 (Extensions of Time, Postponements and Adjournments)

Rule 161[62] governs extensions of time, postponements, and adjournments requested by parties. Under current Rule 161(c)(2), a hearing officer may stay a proceeding pending the Commission's consideration of offers of settlement under certain limited circumstances, but that stay does not affect any of the deadlines in Rule 360. In recognition of the important role of settlement in administrative proceedings, we proposed to amend Rule 161(c)(2) to allow a stay pending Commission consideration of settlement offers to also stay the timelines set forth in Rule 360.[63] All the other requirements for granting a stay under the current rule would remain unchanged. The Commission did not receive any comments on this aspect of the proposal. We are adopting the amendments as proposed.

F. Rule 180 (Sanctions)

Current Rule 180 allows the Commission or a hearing officer to exclude a person from a hearing or conference, or summarily suspend a person from representing others in a proceeding, if the person engages in contemptuous conduct before either the Commission or a hearing officer. The exclusion or summary suspension can last for the duration or any portion of a proceeding, and the person may seek review of the exclusion or suspension by filing a motion to vacate with the Commission. We proposed to amend Rule 180 to allow the Commission or a hearing officer to exclude or summarily suspend a person for any portion of a deposition, as well as the proceeding, a conference, or a hearing. The person would have the same right to review of the exclusion or suspension by filing a motion to vacate with the Commission. We did not receive any comments on this aspect of the proposal and are adopting the rule as proposed, with the addition of one ministerial edit to Rule 180(c).

As currently drafted, Rule 180(c) provides that the Commission or hearing officer may enter a default pursuant to Rule 155, dismiss *the case*, decide the particular *matter* at issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that *matter* if a person fails to (1) make a filing required under the Rules of Practice; or (2) cure a deficient filing within the time specified by the Commission or the hearing officer pursuant to Rule 180(b).[64] We are amending the Rule to substitute the phrase "one or more claims" for the phrase "the case," and to substitute the word "claim" for the word "matter." These non-substantive changes are designed to more accurately reflect the terminology used in administrative proceedings but are not intended to, and do not, change the substance of the Rule.

G. Rule 220 (Answer to Allegations)

1. Proposed Rule

Current Rule 220 sets forth the requirements for filing answers to allegations in an OIP.[65] Among other things, it requires a respondent to state in the answer whether the respondent is asserting any defenses, including res judicata and statute of limitations.[66] We proposed amendments to Rule 220 to emphasize that a respondent must affirmatively state in an answer whether the respondent is asserting any avoidance or affirmative defenses, including but not limited to res judicata, statute of limitations or reliance even if such theories are "not technically considered affirmative defenses."[67] Timely assertion of such theories, we explained, "would focus the use of prehearing discovery, foster early identification of key issues and, as a result, make the discovery process more effective and efficient."[68]

2. Comments Received

Commenters generally opposed the proposed amendment and requested that it be withdrawn. Commenters' principal contention was that "reliance on counsel is not a defense required to be raised in an answer, but simply goes to the evidence of whether a respondent acted in good faith."[69] Commenters also

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[62] 17 CFR 201.161.

[63] We are also adopting a conforming amendment to Rule 360(a)(2)(ii) to include a cross-reference to amended Rule 161(c)(2).

[64] Emphasis added.

[65] 17 CFR 201.220.

[66] *Id.*

[67] 80 FR at 60095. *Compare* Fed. R. Civ. P. 8(c) ("In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense.") "Generally speaking," Federal Rule of Civil Procedure 8(c)'s reference to "an avoidance or affirmative defense" "encompasses two types of defensive allegations: Those that admit the allegations of the complaint but suggest some other reason why there is no right of recovery, and those that concern allegations outside of the plaintiff's prima facie case that the defendant therefore cannot raise by a simple denial in the answer." 5 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* section 1271 (3d ed.). As discussed below, in the final rule we have clarified the reference to "reliance" in the proposed rule.

[68] 80 FR at 60095.

[69] NJSBA (citing *Howard* v. *SEC*, 376 F.3d 1136, 1147 (D.C. Cir. 2004) (holding that "reliance on the advice of counsel need not be a formal defense"));

Continued

argued that the proposed amendment prejudices respondents, provides an unfair advantage to Division staff in administrative proceedings, improperly requires respondents to disclose their trial strategy, and infringes on the attorney work-product privilege.[70]

3. Final Rule

We continue to believe that timely assertion of reliance would focus the use of prehearing discovery and foster early identification of key issues, so that they may be explored in discovery and depositions, and, as a result, make the discovery process more effective and efficient. We therefore are adopting the amended Rule substantially as proposed, with one clarifying modification. The final rule is not intended to change the substantive law regarding reliance or any of the securities laws. The Commission recognizes that, in cases involving scienter-based misconduct, the Division bears the burden of proof on demonstrating that the respondent acted with scienter.

However, we have modified the final rule to give more content to and clarify the requirement that respondents disclose "reliance." As adopted, the final rule now requires a respondent to state in the answer "whether the respondent relied on the advice of counsel, accountants, auditors, or other professionals, in connection with any claim, violation alleged, or remedy sought." The reference to accountants, auditors, and other professionals reflects that, in addition to arguing that they relied on the advice of counsel, respondents in Commission administrative proceedings (and defendants in Commission civil enforcement actions) often assert that the respondent (or defendant) relied on such professionals in connection with the conduct alleged.[71] The amended rule therefore requires respondents to state in their answer whether they intend to raise the issue of reliance on professional advice in the proceeding, whether as part of an assertion of a formal affirmative defense or an argument in response to the claims alleged in the OIP on which the Division retains the burden of proof. The amended rule provides that failure to do so may be deemed a waiver.

Contrary to the comments discussed above, the Commission believes this change will not materially alter current practice and will not unfairly advantage the Division because, as noted, even in the absence of this clarification, respondents often assert reliance in their answers to Commission OIPs.[72] Finally, this amendment would align administrative proceedings with civil litigation in generally aiming to eliminate surprise and identifying the issues for the hearing.[73]

H. Rule 221 (Prehearing Conference)

Rule 221 permits a hearing officer to direct the parties to meet for an initial prehearing conference and includes a list of subjects to be discussed.[74] We proposed amendments to Rule 221(c) to add depositions and expert witness disclosures or reports to the list of subjects to be discussed at the prehearing conference. We received no comments on this aspect of the proposal.

We are adopting the amendment as proposed with respect to depositions and expert witness disclosures. The addition of depositions to certain proceedings will potentially raise issues, including the identity of the persons to be deposed and the timing of any depositions, that will benefit from early discussion between the parties and with the hearing officer. At a prehearing conference, the parties and the hearing officer may discuss the timing of depositions, the proposed deponents, whether any party will be making a motion seeking leave to conduct additional depositions pursuant to amended Rule 233, and any issues any party foresees arising in connection with the proposed depositions.

In addition, we are modifying Rule 221(c) in two other respects. First, in response to comments advocating amendments that would require a date certain by which the Division should complete its document production under Rule 230,[75] we are amending Rule 221(c) to include in the list of subjects to be discussed at a prehearing conference the timing for completion of production of documents as set forth in Rule 230. The Commission expects that the Division will continue its practice of timely producing documents, and any potential concerns surrounding the completion of document production should be discussed with the hearing officer at a prehearing conference.[76]

Second, we are amending Rule 221(c)(8) to clarify that the subjects to be discussed at the prehearing conference include the filing of any motion pursuant to Rule 250. As amended, Rule 250 contemplates the filing of various types of dispositive motions (*i.e.*, motion for a ruling on the pleadings, motion for summary disposition, and motion for a ruling as a matter of law following completion of a case in chief). Parties may discuss at a prehearing conference whether they anticipate filing any motions pursuant to amended Rule 250, and the timing of such motions.[77]

I. Rule 222 (Prehearing Submissions)

1. Proposed Rule

Rule 222(b)[78] provides that a party who intends to call an expert witness shall disclose information related to the expert's background, including qualifications, prior testimony, and publications. We proposed amendments to current Rule 222(b)'s requirement that parties submit a list of other proceedings in which their expert witness has given expert testimony and a list of publications authored or co-authored by their expert witness. As proposed, Rule 222(b) limits the list of proceedings to the previous four years, and limits the list of publications to the previous ten years.

The proposed amendment requires disclosure of a written report for a witness retained or specially employed to provide expert testimony in the case, or for an employee of a party whose duties regularly involve giving expert

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see also Hudson II (citing anonymous blog post) and *infra* note 72.

[70] NJSBA; Hudson II.

[71] *See, e.g.*, Answer of Respondent Jim Hopkins at 25, ¶ 4, *In re Flannery*, No. 3–14081 (Oct. 26, 2010); Answer of John Patrick ("Sean") Flannery to Order Instituting Administrative and Cease-and-Desist Proceedings at 12, ¶¶ 5, 6, *In re Flannery*, No. 3–14081 (Oct. 26, 2010); Answer of Defendant Samuel E. Wyly, Doc. 58 at 29, *SEC* v. *Wyly*, 10–cv–5760 (S.D.N.Y.) (Apr. 28, 2011) ("Plaintiff's claims are barred in whole or in part because Defendant relied in good faith upon the judgment, advice, and counsel of professionals."); *see also* NJSBA.

[72] Whether, and to what extent, the assertion of reliance on advice or involvement of counsel in the answer to the OIP results in the waiver of the attorney-client privilege depends on the facts of any given proceeding. As a general matter, "the attorney-client privilege cannot at once be used as a shield and a sword." *United States* v. *Bilzerian*, 926 F.2d 1285, 1292 (2d Cir. 1991). In determining whether the privilege is waived, hearing officers should consider how respondents have framed their reliance on counsel in the answer, the allegations in the OIP, and the facts and circumstances underlying the assertion of reliance. The parties may discuss these issues at the prehearing conference pursuant to Rule 221.

[73] *See Pierce* v. *Pierce*, 5 F.R.D. 125 (D.D.C. 1946); *cf.* Fed.R.Civ.P. 1.

[74] 17 CFR 201.221(b).

[75] *See* Calfee (suggesting rule should require production to be completed not later than seven days prior to the deadline for filing an answer); Gibson (suggesting a time period of 45 days from initiation of a proceeding).

[76] Rule 230(d) provides, *inter alia*, unless otherwise ordered by the Commission or the hearing officer, the Division shall commence making documents available to a respondent for inspection and copying pursuant to the section no later than 7 days after service of the order instituting proceedings. 17 CFR 201.230(d).

[77] *See infra* discussion of Rule 250 at Section M.

[78] 17 CFR 201.222.

testimony. The proposed amendment outlines the elements of that written report, including a complete statement of all opinions the witness will express and the basis and reasons for them, the facts or data considered by the witness in forming them, any exhibits that will be used to summarize or support them, and a statement of the compensation to be paid for the expert's study and testimony in the case.

As proposed, the amendment provides for two categories of information protected from discovery: (1) Drafts of any report or other disclosure required to be submitted in final form; and (2) communications between a party's attorney and the party's expert witness who would be required to submit a report under the rules, unless the communications related to the expert's compensation, or certain facts, information, or assumptions provided by the attorney to the expert.

2. Comments Received

We received one comment on this aspect of the proposal. The commenter generally supported the amendment in light of the similarity of the proposed rule to Rule 26(b) of the Federal Rules of Civil Procedure but urged the Commission to adopt a rule allowing the parties to present direct expert testimony at all hearings.[79]

3. Final Rule

We are adopting the rule substantially as proposed, with one ministerial edit. As proposed, the rule text provided that communications between a party's attorney and the party's expert witness who is *identified* under this section need not be furnished, subject to certain exceptions. Consistent with the requirements for expert witness disclosures and expert reports in the Federal Rules of Civil Procedure, and to align the rule text with the description of the amendments in the proposing release, we have revised the rule to clarify that the protections afforded to communications between a party's attorney and the party's expert witness under section (b)(2) apply to communications with experts who are required to provide a report under the rule.[80]

We believe the amendments to Rule 222 will promote efficiency in both prehearing discovery and the hearing.[81] Moreover, the final rule comports with current practices of some hearing officers, who have required such expert reports in proceedings before them.[82]

The final rule requires each party who intends to call an expert witness to submit a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony during the previous four years, and a list of publications authored or co-authored by the expert in the previous ten years. Additionally, if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, then the party must include in the disclosure a written report—prepared and signed by the witness. The report must contain: (i) A complete statement of all opinions the witness will express and the basis and reasons for them; (ii) the facts or data considered by the witness in forming them; (iii) any exhibits that will be used to summarize or support them; and (iv) a statement of the compensation to be paid for the study and testimony in the case. Consistent with the proposal, amended Rule 222 protects from disclosure (1) draft reports or other disclosure required to be submitted in final form, and (2) communications between a party's attorney and the party's expert witness required to provide a report under the rule, except if the communications relate to compensation for the expert's study or testimony, identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed, or identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

We disagree with the comment suggesting that the rule be altered to require that expert witnesses testify at the hearing in all cases. Hearing officers currently use expert reports as evidence and permit direct examination as necessary,[83] a practice that we understand comports with the practice followed by a number of district judges in federal court bench trials. We believe that the final rule furthers the goal of efficiency without compromising a respondent's ability to present direct expert testimony.

J. Rule 230 (Enforcement and Disciplinary Proceedings: Availability of Documents for Inspection and Copying)

1. Proposed Rule

After the institution of proceedings, Rule 230(a)[84] requires the Division to make available to respondents certain documents obtained by the Division in connection with an investigation. Rule 230(b)[85] provides a list of documents that may be withheld from this production. We proposed to amend Rule 230(b) to provide that the Division may redact certain sensitive personal information from documents that will be made available, unless the information concerns the person to whom the documents are being produced. We also proposed to amend Rule 230(b) to clarify that the Division may withhold or redact documents that reflect settlement negotiations with persons or entities who are not respondents in the proceeding at issue.

2. Comments Received

One commenter supported the proposal but advocated additional amendments to Rule 230.[86] The commenter argued that, in addition to the categories of documents listed in Rule 230(a)(1)(i), the rule should require disclosure by the Division of all persons that the Division interviewed or took testimony from during the investigation, including a summary of the factual topics covered in each interview.[87] The commenter also advocated amendments to Rule 230(b) that would preclude Division staff from introducing, as evidence in administrative proceedings, any Wells submissions, pre-Wells submissions and white papers submitted by a party to the proceeding. This commenter argued that the same policy arguments supporting an exclusion of settlement negotiations from disclosure also apply to the content of Wells submissions.[88]

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[79] Gibson.

[80] Section (b) only addresses experts whom a party intends to call at the hearing. The rule does not cover consulting experts, *i.e.*, experts who have been retained or specially employed in anticipation of litigation or to prepare for the hearing, but who are not expected to be called as witnesses at the hearing.

[81] *See* Fed.R.Civ.P. 26(b)(4), (a)(2), respectively.

[82] *See, e.g., ZPR Investment Management, Inc.*, Admin Proc. Ruling Rel. No. 775 (Aug. 6, 2013), available at *http://www.sec.gov/alj/aljorders/2013/ap-775.pdf* (last visited July 11, 2016) (general prehearing order stating that "expert reports should be as specific and detailed as those presented in federal district court pursuant to Federal Rule of Civil Procedure 26.").

[83] *See, e.g., Leslie A. Arouh*, Admin Proc. File No. 3–10884, 2003 SEC LEXIS 3210 (Feb. 19, 2003) (ordering production of respondent's expert report as evidence, "to be fleshed out as needed by further direct testimony, and subject to cross examination."); *Reliance Financial Advisors, LLC*, Admin Proc. Ruling Rel. No. 2627, 2015 SEC LEXIS 1703 (May 4, 2015) (order following prehearing conference stating that a hearing officer "will accept the Division's expert report as testimony but will expect brief direct testimony by the expert during the hearing as well"); *Ambassador Capital Management, LLC*, Admin Proc. Ruling Rel. No. 1149 n.1, 2014 SEC LEXIS 45 (Jan. 7, 2014) (order setting prehearing schedule stating, "[a]t the prehearing conference, it was established that any party offering expert testimony shall be prepared to conduct direct examination of the expert for no more than forty-five minutes at the hearing").

[84] 17 CFR 201.230(a).

[85] 17 CFR 201.230(b).

[86] CCMC.

[87] *Id.*

3. Final Rule

We are adopting Rule 230 as proposed, with one ministerial change unrelated to the proposal.[89] The final rule permits the Division to redact an individual's social security number, an individual's date-of-birth, the name of an individual known to be a minor, or a financial account number, taxpayer-identification number, credit card or debit card number, passport number, driver's license number, or state-issued identification number other than the last four digits of the number. We believe this amendment provides an important safeguard that should enhance the protection afforded to sensitive personal information. It is also consistent with privacy rules of some federal district courts.[90] In addition, final Rule 230(b) provides that the Division may withhold or redact documents that reflect settlement negotiations with persons or entities who are not respondents in the proceeding at issue. As we explained in the proposal, this amendment is consistent with the important public policy interest in candid settlement negotiations,[91] and we believe it will help to preserve the confidentiality of settlement discussions and safeguard the privacy of potential respondents with whom the Division has negotiated.

We decline to expand Rule 230 to require the Division to disclose all persons interviewed during the investigation, or to require the staff to produce summaries of all such interviews, as suggested by one commenter. Rule 230(a) generally requires the Division to make available for inspection and copying documents obtained by the Division from persons not employed by the Commission during the course of its investigation prior to the institution of proceedings.[92] This includes each subpoena issued during the investigation, all other written requests to persons not employed by the Commission to provide documents or to be interviewed, the documents turned over in response to any such subpoenas or other written requests, all transcripts and transcript exhibits, and any other documents obtained from persons not employed by the Commission.[93] Rule 232 permits a party to request the issuance of subpoenas requiring the production of documents and subpoenas compelling the testimony of witnesses. The Commission believes that, taken together, these discovery tools will enable the parties to identify witnesses who may possess relevant information and to determine who should be deposed prior to the hearing.[94]

With the exception of certain final inspection or examination reports that the Division intends to use at the hearing, documents prepared by Commission staff are treated as attorney work-product, and are not required to be produced pursuant to Rule 230.[95] The Commission believes it appropriate to continue the current practice of allowing the hearing officer to evaluate attorney work-product production disputes on a case-by-case basis.[96] This comports with federal district court practice for resolving discovery disputes concerning the production of attorney work-product under Federal Rule of Civil Procedure 26(b).[97]

The final rule will not, as one commenter suggested, prohibit the use of Wells submissions and white papers as evidence in administrative proceedings. A Wells notice provided to a respondent by the Division states that the Commission may use the information contained in such a submission as an admission, or in any other manner permitted by the Federal Rules of Evidence, or for any of the Routine Uses of Information described in Form 1662, "Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena." [98] A respondent is therefore given notice prior to providing any Wells submissions of the various uses the Division may make of the information included therein.

The Commission does not treat Wells submissions as settlement materials.[99] The procedures for submitting offers of settlement to the Commission are governed by Rule 240.[100] Those procedures require, among other things, an offer of settlement signed by the person making the offer, as well as a waiver by the person of, among other things, the right to claim bias or prejudgment by the Commission based on the consideration of or discussions concerning settlement of all or any part of the proceeding.[101] In contrast, the Wells submission process is governed by Rule 5(c) of the Commission's Informal and Other Procedures, which provides persons who become involved in preliminary or formal investigations the opportunity to voluntarily submit "a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation." [102]

The Commission's longstanding view has been that Wells submissions "will normally prove most useful in connection with questions of policy, and on occasion, questions of law, *bearing upon the question of whether a proceeding should be initiated*, together with considerations relevant to a particular prospective defendant or respondent that might not otherwise be brought clearly to the Commission's attention."[103] We believe this approach remains sound because it furthers the Commission's goal of having before it the position of persons under investigation at the time it is asked to consider initiating an enforcement action. In addition, we believe that the credibility of a respondent's Wells submission could be diminished if the final rule restricted the use of such submissions in subsequent administrative proceedings. Such a rule could enable a potential respondent to freely deny, or make arguments fundamentally inconsistent with, statements or claims made in prior Wells submissions. We therefore believe it is appropriate not to treat Wells submissions as settlement materials. Rather, hearing officers may continue the current practice of determining whether, under the facts and circumstances, a Wells submission should be excluded from a proceeding.

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[88] *Id.*

[89] Specifically, we are amending the reference in current Rule 230(a)(1)(vi) to the Division of Market Regulation to reflect the current name of the Division—*i.e.*, the Division of Trading and Markets.

[90] *See, e.g.*, Fed.R.Civ.P. 5.2(a); DDC Local Civ. R. 5.4(f).

[91] *See generally*, Federal Rule of Evidence 408 ("Compromise Offers and Negotiations"), *Advisory Committee Notes;* 2 McCormick on Evid. section 266 (7th ed.).

[92] *See* 17 CFR 201.230(a).

[93] 17 CFR 201.230(a)(1)(i)–(v).

[94] We do not believe it is necessary or appropriate to require disclosure by the Division of every person interviewed or deposed during an investigation, or to require the Division to prepare summaries of all such interviews, as suggested by the commenter. In its fact-gathering role, Division staff may interview dozens of potential witnesses in the course of an investigation that can span many months. Such interviews often serve to narrow the scope of an investigation, and the persons interviewed ultimately may bear no relevance to the proceedings instituted by the Commission.

[95] *See* 17 CFR 201.230(b)(1)(ii); *see also 1995 Release,* 60 FR at 32762 (comments (a) and (b) to Rule 230). Work product includes any notes, working papers, memoranda or other similar materials, prepared by an attorney in anticipation of litigation. *See Hickman* v. *Taylor,* 329 U.S. 495 (1947); *see also* Fed. R. Civ. P. 26(b)(3) and (b)(5).

[96] Rule 230(c) authorizes the hearing officer to review any documents withheld by the Division pursuant to Rule 230(b)(1)(i)–(iv). *See, e.g., Piper Capital Management, Inc. et al.,* Admin. Proc. Rel. No. 577, 1999 SEC LEXIS 301 at *20 (Jan. 15, 1999) (granting motion for *in camera* inspection of documents comprising, reflecting or summarizing off-record interviews which Division conducted with one witness"); *Jeffrey R. Patterson, et al.* Admin. Proc. File No. 3–10936, 2003 SEC LEXIS 3217 (finding, following *in camera* review, that staff's handwritten notes of witness's interview did not contain exculpatory evidence and thus were not required to be made available under Rule 230).

[97] *See, e.g., SEC* v. *NIR Group,* 283 FRD. 127; 2012 U.S. Dist. LEXIS 116062 at *21, *23 (E.D.N.Y. Aug. 17, 2012) (denying, in part, defendant's motion to compel following *in camera* review of sample Division interview notes and memoranda relating to same); *SEC* v. *Treadway, et al.,* 229 FRD. 454, 455–56, 2005 U.S. Dist. LEXIS 15167, at *4–5 (S.D.N.Y. July 26, 2005) (following *in camera* review, upholding Magistrate Judge determination that proffer session notes prepared by Division attorneys were protected attorney work-product).

[98] Form 1662 can be found at: *http://www.sec.gov/about/forms/sec1662.pdf.*

[99] *Cf. In re IPO Securities Litig.*, 2003 U.S. Dist. LEXIS 23102 at *13 (S.D.N.Y. Jan 12, 2004) ("Wells submissions are not in themselves settlement materials, although they may sometimes contain offers of settlement").

[100] 17 CFR 201.240.

[101] 17 CFR 201.240(b) and (c)(5).

[102] 17 CFR 202.5(c).

K. Rule 234 (Depositions Upon Written Questions)

Current Rule 234 contains procedures for taking depositions through written questions. Under Rule 234, a party may make a motion to take a deposition on written questions by filing the questions with the motion. We proposed to amend the rule to provide that the moving party may take a deposition on written questions either by stipulation of the parties or by filing a motion demonstrating good cause. We did not receive any comments on this aspect of the proposal and are adopting the amendment as proposed, with one ministerial change to paragraph (a), which in the proposal inadvertently referred to Rule 232 instead of Rule 233. The amendment is intended to provide a clear standard under which the hearing officer or Commission would review such a motion. The amendment replaces the standard under the current rule, which references current Rule 233(b)'s limit on depositions to witnesses unable to appear or testify at a hearing.

L. Rule 235 (Introducing Prior Sworn Statements or Declarations)

1. Proposed Rule

Current Rule 235[104] allows the introduction of certain prior sworn statements into the record. Current Rule 235(a) sets forth the standards for persons making a motion to introduce prior sworn statements of non-party witnesses. We proposed to amend Rule 235(a) to include in the list of prior sworn statements depositions taken pursuant to Rules 233 or 234, as well as investigative testimony and declarations taken under penalty of perjury pursuant to 28 U.S.C. 1746. In addition, we proposed to add new paragraph (b) to Rule 235 to permit the use of statements made by a party or a party's officers, directors, or managing agents, and to clarify that such statements may be used by an adverse party for any purpose. Consistent with the proposed amendments to Rule 235(a), the amendments to new Rule 235(b) included depositions taken pursuant to Rules 233 or 234, as well as investigative testimony and declarations taken under penalty of perjury pursuant to 28 U.S.C. 1746.

2. Comments Received

We received one comment on this aspect of the proposal. A securities blog entry cited by the commenter objected to the introduction of sworn statements under current Rule 235.[105] The author of the blog asserted, without providing support, that hearing officers currently admit unreliable investigative testimony into the record and that the proposal endorses this practice. The author opposed the admission of investigative testimony and declarations and argued that the proposal would unfairly benefit the Division.

3. Final Rule

We are adopting the amendments as proposed. We believe that current Rule 235 contains sufficient safeguards to prevent the introduction of unreliable testimony. For instance, to introduce a prior sworn statement under current Rule 235(a), a person must make a motion setting forth reasons for introducing the statement. The standard for granting such a motion focuses on the admissibility and relevance of the statement, the availability of the witness for the hearing, and the presumption favoring oral testimony of witnesses in an open hearing. The statements that will be admissible pursuant to amended Rule 235(a)—including statements made pursuant to 28 U.S.C. 1746, deposition testimony, investigative testimony, and other sworn statements—will be subject to these standards.

Amended Rule 235(b) will permit an adverse party to seek the admission of statements made by a party or the party's officer, director, or managing agent. A party opposing the introduction or use of such statements may still object to their admission under amended Rule 320 to the extent such evidence is "irrelevant, immaterial, unduly repetitious, or unreliable."[106]

M. Rule 250 (Dispositive Motions)

Rule 250 currently provides that a party may move for summary disposition after a respondent's answer is filed and documents have been made available to the respondent and sets forth the procedures and standards governing such a motion. If the "interested division," *e.g.*, the Division of Enforcement, has not completed its case in chief, a motion for summary disposition may be made only with leave of the hearing officer. Rule 250 has been used by parties in our proceedings in a manner analogous to the summary judgment procedure in the Federal Rules of Civil Procedure. It also has been used as a means of seeking a ruling on the pleadings or seeking dismissal as a matter of law either early in a proceeding or following the Division's completion of its evidentiary presentation at the hearing.

A principal purpose of Rule 250 is to facilitate the efficient resolution of proceedings by disposing of issues prior to the hearing, where appropriate, without introducing unnecessary delays or costs into the proceeding. As we have previously explained, the rule "balances the potential efficiency gained by allowing the hearing officer to eliminate unnecessary hearings in some cases against the costs of allowing additional motions, prehearing procedures and the attendant delay in cases where a hearing in which all evidence can be presented and witness demeanor can be observed is warranted."[107]

We did not propose to amend Rule 250. However, one commenter suggested that the Commission modify the current rule to permit a respondent to challenge the Division's "legal theories . . . as of right"[108] prior to the hearing. As discussed below, we are amending Rule 250 both to respond to the commenter's suggestion and to clarify how summary disposition motions will operate in conjunction with the amendments to Rules 233 and 360 that permit parties to take depositions and that provide for a longer maximum prehearing period in 120-day proceedings. Consistent with the Commission's prior commentary on Rule 250, these amendments are intended to maintain the balance between encouraging more streamlined proceedings while protecting against unwarranted delays and costs.[109]

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[103] *See Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations*, Securities Act Rel. No. 5310, 1972 SEC LEXIS 238 (Sept. 27, 1972) (emphasis added).

[104] 17 CFR 201.235.

[105] *See* Hudson II (citing anonymous blog).

[106] *See infra* discussion at Section N.

[107] *See 1995 Release*, 60 FR at 32767–68; *see also id.* at 32767 ("Summary disposition is a procedure that can resolve issues prior to hearing, thereby reducing the costs of hearing and expediting resolution of the proceeding.").

[108] Gibson.

Amended Rule 250 provides that three types of dispositive motions may be filed at different stages of an administrative proceeding and sets forth the standards and procedures governing each type of motion. These motions—described in paragraphs (a)–(d) of the amended rule—generally correspond to certain dispositive motions that may be filed in federal court under the Federal Rules of Civil Procedure.

Paragraph (a) of amended Rule 250 governs the filing of motions for a ruling on the pleadings. It provides that, no later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, it is entitled to a ruling as a matter of law. Paragraph (a) thus permits a respondent to seek a ruling as a matter of law based on the factual allegations in the OIP and permits either party to seek a ruling as a matter of law after the filing of an answer.[110] Consistent with the commenter's suggestion, we believe that obtaining leave of the hearing officer prior to filing such a motion is unnecessary; a motion under paragraph (a) is, therefore, available to any party as a matter of right. Additionally, paragraph (a) provides that a hearing officer shall promptly grant or deny the motion. This is intended to help ensure that such motions do not serve to delay proceedings.[111]

Paragraph (b) of amended Rule 250 governs the filing of motions for summary disposition in proceedings designated as 30- and 75-day proceedings pursuant to amended Rule 360. It provides that after a respondent's answer has been filed and documents have been made available to that respondent pursuant to Rule 230, any party may move for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to Rule 323 show (1) that there is no genuine issue with regard to any material fact and (2) that the movant is entitled to summary disposition as a matter of law.[112] If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to oppose the motion, paragraph (b) provides that the hearing officer shall deny or defer the motion. Leave of the hearing officer is not required to file such a motion in 30- and 75-day cases. This is consistent with existing practice in the proceedings we have designated for shorter timeframes—including, for example, proceedings pursuant to Exchange Act Section 12(j)[113] as well as follow-on proceedings[114]—where we have repeatedly observed that summary disposition is typically appropriate because the issues to be decided are narrowly focused and the facts not genuinely in dispute.

Paragraph (c) of amended Rule 250 governs the filing of motions for summary disposition in proceedings designated as 120-day proceedings pursuant to amended Rule 360. It provides that after a respondent's answer has been filed and documents have been made available to that respondent pursuant to Rule 230, any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, deposition transcripts, documentary evidence or facts officially noted pursuant to Rule 323 show (1) that there is no genuine issue with regard to any material fact and (2) that the movant is entitled to summary disposition as a matter of law.[115] If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to justify opposition to the motion, paragraph (c) provides that the hearing officer shall deny or defer the motion.

Leave of the hearing officer must be obtained in order to file a Rule 250(c) motion. Leave may be granted only if the moving party establishes good cause and if consideration of the motion will not delay the scheduled start of the hearing. Paragraph (c) further provides that the hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion.

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[109] As noted *supra* at n.16 and pursuant to current Rule 360(a)(1), unless the Commission directs otherwise, the hearing officer shall prepare an initial decision in any proceeding in which the Commission directs a hearing officer to preside at a hearing, provided, however, that an initial decision may be waived by the parties with the consent of the hearing officer pursuant to Rule 202. These amendments do not alter this requirement.

[110] This is analogous to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure. *See* Fed.R.Civ.P. 12(b)(6) (failure to state a claim upon which relief can be granted); 12(c) (judgment on the pleadings).

[111] The same commenter suggested that the Commission be required to promptly hear and resolve all appeals from hearing officer denials of prehearing motions for summary disposition that attack the statutory or regulatory basis for the proceeding, or that challenge the constitutionality thereof. *See* Gibson. The Commission has not adopted this suggestion because we believe the existing mechanism for review is appropriate and is consistent with the overall goal of ensuring an efficient resolution of proceedings. *See generally Gary L. McDuff,* Exchange Act Release No. 78066, 2016 WL 3254513 (June 14, 2016). Under Rule 400(a), we "may, at any time, on [our] own motion, direct that any matter be submitted to [us] for review." Consistent with Rule 400(a), a respondent may seek review of issues such as those raised by the commenter at any point in an administrative proceeding. We have likewise not adopted the commenter's suggestion that we adopt a rule providing that an administrative proceeding will be automatically stayed pending final resolution of a respondent's challenge to the legality of the proceeding. *See* Gibson. We decline to adopt such a blanket rule because, among other things, it would unduly delay proceedings where the underlying legal challenge lacks merit. Moreover, any respondent may seek a stay of the administrative proceeding and, where appropriate, the Commission in its discretion may issue such a stay.

[112] This is analogous to Federal Rule of Civil Procedure 56. *See* Fed.R.Civ.P. 56 (summary judgment). To streamline amended Rule 250, we have deleted the portion of current Rule 250(a) that provided that, the facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323. This is not intended to be a substantive change. Consistent with current Commission opinions regarding summary disposition motions, the facts should be construed in the light most favorable to the non-moving party. *See, e.g., Jay T. Comeaux,* Exchange Act Release No. 72896, 2014 WL 4160054, at *2 (Aug. 21, 2014). Importantly, a non-moving party "may not rely on bare allegations or denials but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing." *Id.; see also Kornman* v. *SEC,* 592 F.3d 173, 182 (D.C. Cir. 2010) (finding that summary disposition was properly granted where the respondent "proffered no evidence to contradict either his admissions or the Division's evidence"); *Conrad P. Seghers,* Advisers Act Release No. 2656, 2007 WL 2790633 at *4 n.25 (Sept. 26, 2007) ("[Respondent] must set forth specific facts establishing a genuine issue of material fact and may not rely upon mere allegations in his pleadings to the law judge to create a genuine issue."), *petition denied,* 548 F.3d 129, 136 (D.C. Cir. 2008).

[113] *See, e.g., China Biotics, Inc.,* Exchange Act Release No. 70800, 2013 WL 5883342, at *16 (Nov. 4, 2013) (explaining that summary disposition in a proceeding pursuant to Section 12(j) was appropriate when the respondent "still has not identified any evidence demonstrating a genuine issue of material fact"); *Citizens Capital Corp.,* Exchange Act Release No. 67313, at 16 (June 19, 2012) ("We have found that summary disposition is appropriate in proceedings like this one brought pursuant to Exchange Act Section 12(j), where the issuer has not disputed the facts that constitute the violation.").

[114] *See, e.g., Jeffrey L. Gibson,* Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *19–20 (Feb. 4, 2008) ("Use of the summary disposition procedure has been repeatedly upheld in cases such as this one where the respondent has been enjoined or convicted, and the sole determination concerns the appropriate sanction.") *petition denied,* 561 F.3d 548, 555 (6th Cir. 2009); *Adoption of Amendments to the Rules of Practice and Related Provisions and Delegations of Authority of the Commission,* Exchange Act Release No. 52846 (Nov. 29, 2005), 70 FR 72566, 72567 (Dec. 5, 2005), available at *http://www.sec.gov/rules/final/34-52846.pdf* (last visited July 8, 2016) ("Motions for summary dispositions are often made in cases where a respondent has been criminally convicted or an injunction has been entered and the conviction or injunction provides the basis for an administrative order against the respondent.").

[115] This is analogous to Federal Rule of Civil Procedure 56 (summary judgment); *see also supra* note 112.

The requirement that leave be obtained to make a motion under paragraph (c) is consistent with the Commission's long-held view that because "[t]ypically, Commission proceedings that reach litigation involve basic disagreement as to material facts . . . [t]he circumstances when summary disposition prior to hearing could be appropriately sought or granted will be comparatively rare." [116] In contrast to matters like 12(j) proceedings that are amenable to resolution on summary disposition,[117] we have noted that the proceedings designated for the longest timeline may not be "appropriate vehicle[s]" for summary disposition.[118] This is so because, as a general matter, hearings are necessary in 120-day proceedings for evidence to be taken on fact-intensive issues such as a respondent's state of mind that generally are not susceptible to summary disposition.

Consequently, we have previously stated in discussing Rule 250 that "leave to file such a motion shall be granted only for good cause shown, and if consideration of the motion will not delay the scheduled start of the hearing." [119] We now codify this as the two-part standard for a hearing officer to grant leave for a party to file a motion for summary disposition under amended Rule 250(c).[120] It is the Commission's view that good cause may generally be demonstrated where there is a substantial likelihood that the party seeking leave to file a motion under paragraph (c) will be successful on the merits of the motion.[121] Additional factors the hearing officer generally should consider in assessing whether a party has demonstrated good cause include, but are not limited to, whether (1) there is agreement among the parties on the operative facts that are the basis of the motion; (2) the motion, if granted, would obviate the need to conduct a substantial portion, or all, of the final hearing; and (3) the motion would not impose undue expense or harassment on the opposing party. Consideration of these factors is intended to further the goal of Rule 250 to promote efficient resolution of proceedings, without introducing unnecessary costs or delays. Consistent with the Commission's prior statements regarding summary disposition in proceedings designated for the longest timeframe, we believe that the good cause standard under paragraph (c) will rarely be satisfied.[122] Granting leave to file a motion for summary disposition only in exceptional cases where good cause is established, and limiting summary disposition to the rare cases where it is appropriate, promotes efficiency by avoiding the attendant delays that may ensue if a hearing officer grants summary disposition and the Commission subsequently remands the case for an evidentiary hearing.[123]

Paragraph (d) of amended Rule 250 governs the filing of motions for a ruling following completion of the Division's case in chief at a hearing. It provides that following the interested division's presentation of its case in chief, any party may make a motion, asserting that it is entitled to a ruling as a matter of law on one or more claims or defenses.[124] Leave from the hearing officer is not required to file such a motion. But as with the motion for summary disposition discussed in paragraph (c), it is the Commission's view that proceedings designated for the longest timeframe will rarely be amenable to resolution based solely on the Division's case in chief, and prior to the respondent's presentation of evidence, and therefore we believe that Rule 250(d) motions should be granted in only the rarest of cases.[125]

Paragraph (e) of amended Rule 250 provides the length limitations applicable to dispositive motions under paragraphs (a)–(d) of amended Rule 250.[126] It provides that dispositive motions, together with any supporting memorandum of points and authorities (exclusive of any declarations, affidavits, deposition transcripts or other attachments), shall not exceed 9,800 words and that requests for leave to file motions and accompanying documents in excess of 9,800 words are disfavored.[127] A party should not circumvent this length limitation by filing or appending a separate document, incorporated by reference into the supporting memorandum, that contains a recitation of any allegedly undisputed facts. To the extent that a party does incorporate a separate statement of facts by reference in its memorandum, such a document counts towards the length limitations in paragraph (e). A motion that does not, together with any accompanying memorandum of points and authorities, exceed 35, double-spaced pages in length, inclusive of pleadings incorporated by reference (but excluding any declarations, affidavits, deposition transcripts or attachments) is presumptively considered to contain no more than 9,800 words. Any motion that exceeds this page limit must include a certificate by the attorney, or an unrepresented party, stating that the brief complies with the word limit set forth in this paragraph and stating the number of words in the motion. The person preparing the certificate may rely on the word count of a word-processing program to prepare the document.

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[116] *1995 Release,* 60 FR at 32768.

[117] *See supra* note 113.

[118] *Comeaux,* 2014 WL 4160054, at *4 n.30 ("We urge parties in the future to consider whether, if the Commission has determined that a particular matter is not an appropriate vehicle for the 120- or 210-day time periods [under current Rule 360], it is an appropriate vehicle for a motion for summary disposition.").

[119] *See 1995 Release,* 60 FR at 32768.

[120] Hearing officers have cited to this standard in assessing whether to grant leave to file a summary disposition motion under current Rule 250. *See, e.g., Arthur F. Jacob,* CPA, Admin. Proc. Ruling No. 3370, 2015 SEC LEXIS 4945, at *3 (Dec. 4, 2015).

[121] *See 1995 Release,* 60 FR at 32768, Comment to Rule 250 ("Where a genuine issue as to material facts clearly exists as to an issue, it would be inappropriate for a party to seek leave to file a motion for summary disposition or for a hearing officer to grant the motion.").

[122] We note that we have removed the provision in current Rule 250(b) stating that denial of leave to file a summary disposition motion "is not subject to interlocutory appeal." The denial of leave to file a motion pursuant to paragraph (c) in amended Rule 250 is subject to Commission review, consistent with the Commission's plenary authority over our administrative proceedings. *See supra* note 111.

[123] *See, e.g., Diane M. Keefe,* Exchange Act Release No. 61928, 2010 SEC LEXIS 1122, at *4–5 (Apr. 16, 2010) (reversing grant of summary disposition, remanding for a hearing, and noting "[w]e have reviewed the limited record before us and believe that the record would benefit from direct and cross-examination of any relevant witnesses and the fact-finding determinations of a law judge" and "that amplification of the current record with facts supporting either party's position on the issue of materiality would aid any decisional process"); *Joseph P. Doxey,* Exchange Act Release No. 77773, 2016 WL 2593988 (May 5, 2016) (finding evidence did not support grant of summary disposition as to Division's allegations of antifraud and registration violations and remanding claims to the law judge).

[124] This is analogous to Federal Rule of Civil Procedure 50(a) (judgment as a matter of law).

[125] In *Rita Villa,* Exchange Act Release No. 39518, 1998 WL 4530 (Jan. 6, 1998), the Commission stated that it did not favor an "abbreviated procedure" in which a hearing officer orally granted a motion for summary disposition following the presentation of the Division's case in chief. We clarify today that *Rita Villa,* which interpreted a prior Rule of Practice, should not be read to apply to amended Rule 250(d) to suggest that a party may never make a motion for summary disposition after a hearing has begun. Such a motion is available as of right: Under amended Rule 250(d), a party may move for a ruling as a matter of law following completion of the Division's case in chief.

[126] Motions made pursuant to amended Rule 250(d) may be made orally, or in writing, but such motions should not be used as a means of delaying completion of the hearing. Should the hearing officer decide that a motion made pursuant to Rule 250(d) requires briefing, the hearing officer may require the parties to brief the motion while the hearing continues to proceed.

[127] We note that paragraph (e) of amended Rule 250 contains the same length limitations as were applicable to summary disposition motions under current Rule 250(c). We have added the term "deposition transcripts" to the list of documents excluded from the page count to comport with the language of amended Rule 250(d) and the amendments to Rule 233.

Paragraph (f) of amended Rule 250 provides the length limitations and response times for opposition and reply briefs pertaining to motions under paragraphs (a)–(d) of amended Rule 250. Paragraph (f)(1) provides that the length limitations in paragraph (e) apply to any opposition to a motion under paragraphs (a)–(d) of amended Rule 250. This reflects the Commission's belief that, in the context of summary disposition motions, affording the responding party the same page limitation as the moving party should help to ensure that the responding party has a sufficient opportunity to respond to all of the positions advanced in the motion. Paragraph (f)(1) further provides that the length limitations in Rule 154(c) apply to any reply; this is consistent with current practice. Paragraph (f)(2)(i) provides that the response times in Rule 154(b) apply to all opposition and reply briefs pertaining to motions under paragraphs (a), (b), and (d) of amended Rule 250. Paragraph (f)(2)(ii) provides that, for any motion for which leave has been granted consistent with the standard in paragraph (c), any opposition must be filed within 21 days after service of a Rule 250(c) motion and that any reply shall be filed within seven days after the service of any opposition. These expanded response times for oppositions and replies pertaining to summary disposition motions pursuant to paragraph (c) are intended to provide sufficient time to respond to the motion in those rare instances where good cause to file such a motion has been established.

N. Rule 320 (Evidence: Admissibility)

1. Proposed Rule

Rule 320 provides the standards for admissibility of evidence. Under the current rule, the Commission or hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial, or unduly repetitious. We proposed to amend the rule to add "unreliable" to the list of evidence that shall be excluded. In addition, we proposed adding new Rule 320(b) to clarify that hearsay may be admitted if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair.

2. Comments Received

Commenters raised a number of concerns about the admissibility of hearsay under proposed Rule 320(b). Most commenters argued that the Commission should incorporate Federal Rules of Evidence governing hearsay into the Commission's administrative proceedings.[128] Commenters, focusing on the importance of cross-examination to test "credibility, memory, [and] bias," argued for limiting the admission of hearsay.[129] Commenters also argued that applying the federal court hearsay rules would ensure consistency and objectivity in administrative proceedings,[130] and suggested that allowing hearsay evidence in administrative proceedings incentivizes forum selection based on the quality and nature of the evidence and witnesses rather than other more appropriate considerations.[131] Some commenters contended that the Commission had not, or could not, "establish a principled basis for adopting a different standard" than the federal rules or other rules requiring "greater scrutiny of hearsay evidence."[132]

Other commenters acknowledged the longstanding admissibility of hearsay in administrative proceedings,[133] but argued that the proposed hearsay standards are nevertheless insufficient.[134] One such commenter argued that the Commission should be bound by the federal rules, and advocated the exclusion of hearsay evidence in proceedings involving civil monetary penalties or bars from association in the securities industry.[135] The other commenter advocated various other limitations on hearsay, including heightened standards for admitting hearsay; notice requirements; and provisions allowing additional depositions to counter proposed hearsay.[136]

A number of the commenters argued that the proposed standards provide insufficient guidance and are prone to unfair application.[137] One commenter argued that hearing officers currently "err on the side of admitting hearsay" and apply the reliability standard inconsistently.[138] Commenters further objected that the proposed standards will "fail to offer any meaningful protection" or improve current practices.[139] Commenters claimed that the absence of more bright-line guidance or procedural hurdles to introducing hearsay creates an undue burden on hearing officers and parties.[140]

3. Final Rule

We are adopting the amendments to Rule 320 as proposed. As the proposing release explained, the standard for excluding unreliable evidence is consistent with the APA. The admission of hearsay evidence that satisfies a threshold showing of relevance, materiality, and reliability also is consistent with the APA, and the "indicia of reliability" standard for admitting such evidence is grounded in well-established interpretations of administrative law.[141]

We are not persuaded of the need to incorporate federal court hearsay rules or the other suggested standards for pre-emptively excluding or challenging hearsay.[142] We believe that Rule 320(b) appropriately focuses on the relevance, materiality, reliability and fairness of proposed hearsay evidence. Nor are we persuaded that the proposed admissibility standards provide insufficient guidance or impose an undue burden on hearing officers or the parties. Hearsay evidence is currently evaluated on a case-by-case basis in light of, among other things, the motives or potential bias of the declarant; the availability and credibility of the declarant; whether the statements are contradicted or consistent with direct testimony; the type of hearsay (*e.g.*, sworn, written, attributable to an identified person); the availability of the missing witness and any attempts to compel witness testimony; and whether or not the hearsay is corroborated by other evidence in the record.[143] We continue to believe that a case-by-case determination of the admissibility of hearsay evidence is more appropriate than the broad exclusionary rules and procedures proposed by the commenters, and therefore adopt the rule as proposed.

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[128] FSR; Gibson; Hudson II (citing anonymous blog); Brune; Grundfest; NJSBA.

[129] Gibson; CCMC.

[130] Calfee.

[131] Gibson.

[132] FSR; *see also* Brune; NJSBA.

[133] Gibson; CCMC.

[134] Gibson; CCMC.

[135] Gibson.

[136] CCMC.

[137] FSR; Brune.

[138] Gibson.

[139] Gibson; Grundfest.

[140] Brune; FSR.

[141] *See* 5 U.S.C. 556(d) (stating that any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence); *see, e.g., J.A.M. Builders, Inc.* v. *Herman,* 233 F.3d 1350, 1354 (11th Cir. 2000) (hearsay admissible in administrative proceedings if "reliable and credible"); *Calhoun* v. *Bailar,* 626 F.2d 145, 148 (9th Cir. 1980) (hearsay admissible if "it bear[s] satisfactory indicia of reliability" and is "probative and its use fundamentally fair"). Courts also have held that hearsay can constitute substantial evidence that satisfies the APA requirement. *See, e.g., Echostar Communications Corp.* v. *FCC,* 292 F.3d 749, 753 (D.C. Cir. 2002) (hearsay evidence is admissible in administrative proceedings if it "bear[s] satisfactory indicia of reliability" and "can constitute substantial evidence if it is reliable and trustworthy"); *see generally Richardson* v. *Perales,* 402 U.S. 389, 407–08 (1971) (holding that a medical report, though hearsay, could constitute substantial evidence in social security disability claim hearing); *cf.* Federal Rule of Evidence 403 (stating that relevant, material, and reliable evidence shall be admitted).

[142] The Supreme Court has stated that ". . . it has long been settled that the technical rules for the exclusion of evidence applicable in jury trials [the Federal Rules of Evidence] do not apply to proceedings before federal administrative agencies in the absence of a statutory requirement that such rules are to be observed." *Opp. Cotton Mills* v. *Administrator,* 312 U.S. 126, 155 (1941).

O. Amendments to Appellate Procedure in Rules 410, 411, 420, 440, and 450

1. Proposed Rules

We proposed amendments to Rules 410 (Appeal of Initial Decisions by Hearing Officers),[144] 411 (Commission Consideration of Initial Decisions by Hearing Officers),[145] 420 (Appeal of Determinations by Self-Regulatory Organizations),[146] 440 (Appeal of Determinations by the Public Company Accounting Oversight Board),[147] and 450 (Briefs Filed with the Commission),[148] which govern appeals to the Commission.

Rule 410(b) currently requires petitioners to set forth all the specific findings and conclusions of the initial decision to which exception is taken, and provides that an exception that is not stated in the notice may be deemed to have been waived by the petitioner.[149] We proposed to amend Rule 410(b) to state, instead, that a petitioner is required to set forth only a summary statement of the issues presented for review.[150] In addition, we proposed to amend Rule 410(c) to limit the length of petitions for review to three pages and to bar incorporation of pleadings or filings by reference.[151] We reasoned that these changes would be consistent with Federal Rule of Appellate Procedure 3(c), which requires only notice pleading and filing where an appellant may appeal as of right.[152]

To help effectuate the amendments to Rule 410(b), we also proposed an amendment to Rule 411(d).[153] Current Rule 411(d) provides that Commission review of an initial decision is limited to the issues specified in the petition for review and any issues specified in the order scheduling briefs.[154] We proposed to amend Rule 411(d) to state that Commission review of an initial decision is limited to the issues specified in an opening brief and that any exception to an initial decision not supported in an opening brief may be deemed to have been waived by the petitioner.[155]

We also proposed to amend Rule 450(c) to no longer allow parties to incorporate pleadings or filings by reference.[156] We explained that, as a practical matter, it is difficult to enforce a word count that allows for incorporation by reference.[157] In addition, we reasoned that current Rule 450(c) encouraged parties to rely on pleadings or filings from the hearing below, rather than addressing the relevant evidence or developing the arguments central to the appeal before the Commission.[158] We explained that prohibiting incorporation by reference was intended to sharpen the arguments and require parties to provide specific support for each assertion.[159]

Finally, we proposed amendments to Rules 420(c) and 440(b) to make them consistent with the proposed amendments to Rules 410(b) and 450(b).[160] Rule 420 governs appeals of determinations by self-regulatory organizations (SROs), and Rule 440 governs appeals of determinations by the Public Company Accounting Oversight Board (PCAOB).[161] We proposed to amend Rule 440(b) to include a two-page limit for the application for review from a PCAOB decision, which is consistent with the current page limit under Rule 420(c) for applications from SROs.[162] We also proposed to amend both Rule 420(c) and Rule 440(b) to include a provision stating that any exception to a determination that is not supported in an opening brief may be deemed to have been waived by the applicant.[163] We explained that these proposed amendments to Rules 420 and 440 would align these rules with the rules governing appeals from initial decisions issued by Commission hearing officers.[164]

2. Comments Received

Two commenters generally supported the proposed amendment to Rule 410(b) insofar as the amended rule would adopt a notice standard for filing appeals with the Commission.[165] But both commenters opposed the proposed limit of the notice of appeal to three pages.[166]

One of the commenters argued that, because the notice of appeal will provide for a caption and other identifying information, three pages may not be sufficient to accurately describe the issues even in a summary format. This commenter suggested that the Commission increase the page limit for notices to five pages.[167]

The second commenter argued that the Commission's analogy to Federal Rule of Appellate Practice 3(c) was misplaced because, the commenter reasoned, appeals of initial decisions are not as of right.[168] This commenter suggested that, if the Commission were to limit petitions for review to three pages, it should also adopt one or more of the following proposals: (i) Extend the word limit to opening briefs to 16,000 words; (ii) permit pleadings to be incorporated by reference, without counting their contents against any word limit; or (iii) remove language in Rule 450(c) providing that motions to file oversized briefs are disfavored.[169]

3. Final Rules

We are adopting the rules as proposed. We continue to believe that a three-page limit for petitions for review is sufficient to allow petitioners to provide notice of the issues that they are appealing. Based on the Commission's experience with appeals from initial decisions, we continue to believe that a default limit of 14,000 words is reasonable, that allowing briefs to incorporate pleadings by reference would be impractical, and that motions to file oversized briefs should be disfavored.

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[143] *See, e.g., Guy P. Riordan*, Exchange Act Release No. 61153, 2009 WL 4731397, at *14 (Dec. 11, 2009); *Edgar B. Alacan*, Exchange Act Release No. 49970, 2004 WL 1496843, at *6 (July 6, 2004); *Wheat, First Securities, Inc.*, Exchange Act Release No. 48378, 2003 WL 21990950, at *12 (Aug. 20, 2003); *Harry Gliksman*, Exchange Act Release No. 42255, 1999 WL 1211765 (Dec. 20, 1999); *Carlton Wade Fleming, Jr.*, Exchange Act Release No. 36215, 1995 WL 539462 (Sept. 11, 1995). The Commission and hearing officers have declined to credit hearsay evidence based on these standards. *See, e.g., Wheat*, 2003 WL 21990950, at *12 (noting that hearing officer declined to admit statements that "had no bearing on" the relevant issue and concluding they were "unreliable," were not "written, signed, or made under oath" and "[t]here was no showing that any of the officials was unavailable to testify at the hearing"); *Mark James Hankoff*, Exchange Act Release No. 30778, 1992 WL 129520, at *3 (finding an affidavit and hearsay statement an unreliable basis for the NASD's finding of fact); *Gary L. Greenberg*, Exchange Act Release No. 28076, 1990 WL 1104065, at *3 (June 1, 1990) (noting that the record as a whole did not provide "sufficient assurance" of the truthfulness or reliability of hearsay evidence to "justify [ ] crediting it over the first-hand testimony" of the respondent).

[144] 17 CFR 201.410.

[145] 17 CFR 201.411.

[146] 17 CFR 201.420.

[147] 17 CFR 201.440.

[148] 17 CFR 201.450.

[149] 17 CFR 201.410(b).

[150] 80 FR at 60096.

[151] *Id.*

[152] *Id.* at n.36.

[153] *Id.* at 60096.

[154] 17 CFR 201.411(d).

[155] 80 FR at 60096.

[156] *Id.*

[157] *Id.* at 60097.

[158] *Id.*

[159] *Id.*

[160] *Id.* at 60097.

[161] *Id.*

[162] *Id.*

[163] *Id.*

[164] *Id.*

[165] FSR; NJSBA.

[166] FSR; NJSBA.

[167] NJSBA.

[168] FSR.

[169] FSR.

Finally, and in response to the comment regarding appeals from initial decisions not being as of right, we note that we are unaware of any case in which the Commission has declined to grant a procedurally proper petition for review.[170] As we explained when we eliminated the filing of oppositions to petitions for review, such oppositions are "pointless" because " 'the Commission has long had a policy of granting petitions for review, believing that there is a benefit to Commission review when a party takes exception to a decision.' "[171] We therefore do not find persuasive the argument that "the content and length of a petition for review should be compared to that described by Federal Rules of Appellate Practice Rule 5 (governing discretionary appeals)."[172]

P. Amendments to Rule 900 Guidelines

1. Proposed Rule

Rule 900 sets forth guidelines for the timely completion of proceedings, and provides for status reports to the Commission on pending cases and the publication of information concerning the pending case docket.[173] As noted in the proposing release, these guidelines are examined periodically for readjustment in light of changes in the pending caseload and staff resources. Consistent with such examination, we proposed to amend Rule 900(a) to state that a decision by the Commission with respect to an appeal from the initial decision of a hearing officer, a review of a determination by an SRO or the PCAOB, or a remand of a prior Commission decision by a court of appeals ordinarily will be issued within eight months from the completion of briefing on the petition for review, application for review, or remand order. Under the proposed rule, if the Commission determines that the complexity of the issues presented in an appeal warrant additional time, the decision of the Commission may be issued within ten months of the completion of briefing. If a decision cannot be issued within the specified eight or ten-month period, the proposed rule provides that the Commission may issue orders extending the period as it deems appropriate in its discretion.

We also proposed to amend Rule 900(c), which sets forth the information to be included in a semi-annual published report concerning the pending case docket. The current rule requires that the report show, among other things, the number of pending cases before the administrative law judges and the Commission, changes in the caseload, the median age of cases at resolution, and the number of cases decided within the guidelines. Proposed Rule 900(c) provides that the report for each time period would include, in addition to the information currently provided, the median number of days from the completion of briefing to the Commission's decision for each appeal resolved.

2. Comments Received

One commenter objected to the proposed changes to the Commission review timeframes under Rule 900(a), arguing that the length of Commission review undermines the efficiency of administrative proceedings.[174] This commenter argued that the proposed amendments improperly relaxed the guidelines. Another commenter raised similar concerns about the length of time required to resolve Commission appeals.[175]

3. Final Rule

We are adopting the amendments as proposed. We believe that the amendments appropriately balance the public interest in efficient resolution of litigated matters with the public interest in carefully considered decision-making, particularly in resolving complex matters. Moreover, we believe that the final amendments balance these revised timeframes with mechanisms for enhancing the efficiency, transparency, and oversight of administrative proceedings, including through the mechanism for Commission orders extending periods for review in individual cases under Rule 900(a)(1)(iv) and the enhanced disclosure required under Rule 900(c).

Q. Effective Date, Applicability Dates and Transition Period

1. Proposed Rule

We proposed that amendments govern any proceeding commenced after the effective date of the final rules.[176] We solicited comments as to whether the amendments as proposed should be applied, in whole or in part, to proceedings that are pending or have been docketed before or on the effective date, and, if so, the standard for applying any amended rules to such pending proceedings.[177]

2. Comments Received

Commenters generally agreed that certain of the amended rules should apply to at least some pending proceedings. But commenters offered different standards for determining when and how the amended rules should apply.

One commenter, for instance, suggested that the amended rules apply "in whole to cases pending as of the effective date where possible."[178] Another commenter proposed that any changes that "enhance the rights of respondents, no matter how small, should apply to proceedings pending on their effective date."[179] A third commenter, citing the general practice in federal court, argued that "[i]nstead of implementing a uniform prospective application," the Commission should require that the amendments apply to pending cases "insofar as just and practicable"—that is, to "pending cases which have yet to proceed to an evidentiary hearing."[180]

Finally, one commenter suggested that the amended rules apply to pending matters "to the fullest extent possible," and provided specific examples of how the various rules would apply to pending proceedings, depending on the phase of the proceeding.[181] Specifically, this commenter suggested that "the new rules for timing and depositions should apply at least to proceedings for which the prehearing conference has not yet taken place, and the new evidentiary rules should apply to any matter for which no hearing has yet taken place."[182]

3. Final Rule

The amended rules will become effective 60 days after publication in the **Federal Register** and shall apply to proceedings initiated on or after that date.[183] For proceedings instituted on or after the date of these amended rules[184] but before the effective date, there will be a transition period. The parties may elect to have these amended rules apply to such proceedings. Specifically, in proceedings that are instituted on or after the date of these amended rules but before the effective date, all of the amended rules (except the amendments to Rule 141, governing service of OIPs) shall apply to such proceedings if, within 14 days of service of the OIP, every party to the proceeding, including the Division, submits a request in writing to the Secretary that the proceedings be conducted under the amended rules. This approach is similar to the approach we took in the 1995 amendments to the Rules of Practice.[185] If any party does not submit such a request, the former rules shall apply, except as provided below.

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[170] *See David F. Bandimere*, Exchange Act Release No. 76308, 2015 WL 6575665, at *20, n.110 (Oct. 29, 2015).

[171] *Id.* (quoting Exchange Act Release No. 48832, 2003 WL 22827684, at *13 (Nov. 23, 2003)).

[172] FSR.

[173] 17 CFR 201.900.

[174] CCMC.

[175] Grundfest.

[176] 80 FR at 60097.

[177] *Id.*

[178] Navistar.

[179] Zornow/Gunther/Silverman.

[180] Hudson I (citing *Landgraf* v. *USI Film Prods.*, 511 U.S. 244, 275 n.29 (1994)).

[181] Gibson.

[182] Gibson.

[183] *See* 5 U.S.C. 553(d).

For all other proceedings instituted before the effective date of these rules, the applicability of the amended rules is described more fully below.

There are many rational ways to implement amendments to procedural rules. When we amended the Rules of Practice in 1995, the new rules became effective one month after publication in the **Federal Register**, and the former rules continued to apply in full to pending administrative proceedings.[186] Other agencies take varying approaches; sometimes they apply amendments to rules prospectively,[187] and at other times they apply such amendments to pending proceedings.[188] Finally, as commenters observed, amendments to the Federal Rules of Civil Procedure generally apply to pending proceedings "insofar as just and practicable."[189]

We conclude that the amended evidentiary rules should apply to proceedings where the hearing has not begun as of the effective date, and that other amended rules should sometimes apply, depending on the stage of the proceeding, as set forth in detail below.[190] For example, amended Rules 221, 233, and 360 shall apply to proceedings where the prehearing conference has not been held as of the effective date of these rules, as well as to proceedings that are stayed (other than pursuant to consideration of a settlement offer under Rule 161(c)(2)(i)),[191] whether by court or Commission order, as of the effective date. Based on the Commission's experience with administrative proceedings, we believe that applying the amended rules in such proceedings would not unduly disrupt pending proceedings.

With respect to a commenter's suggestion of using a "just and practicable" standard to determine whether the amended rules should apply in a given proceeding, the tables below reflect the Commission's determinations of what is just and practicable.

The tables below provide whether and how the amended rules apply:[192]

RULES REGARDING INITIAL FILINGS—APPLY TO PROCEEDINGS INSTITUTED ON OR AFTER THE EFFECTIVE DATE OF THESE AMENDMENTS

Rule 141	Requirements for serving OIP.
Rule 220	Requirements for answers to OIP.
Rule 230	Documents that may be withheld or redacted by the Division.

RULES REGARDING DEPOSITIONS, TIMING OF PROCEEDINGS AND DISPOSITIVE MOTIONS—APPLY TO THOSE PROCEEDINGS WHERE, AS OF THE EFFECTIVE DATE OF THESE AMENDMENTS: (i) THE INITIAL PREHEARING CONFERENCE PURSUANT TO RULE 221 HAS NOT BEEN HELD; OR (ii) THE PROCEEDINGS HAVE BEEN STAYED, EXCEPT FOR PROCEEDINGS STAYED PURSUANT TO RULE 161(c)(2)(i)

Rule 221	Rule amended to add depositions, expert witness disclosures or reports, and timing for completion of production of documents by the Division to the list of subjects to be discussed at the prehearing conference.
Rule 222	Rule amended to change information that is required to be submitted in conjunction with expert reports.
Rule 233	Rule amended to expand use of depositions.
Rule 234	Rule amended to provide that moving party may take a deposition on written questions either by stipulation of the parties or by filing a motion demonstrating good cause.
Rule 250	Dispositive motions.
Rule 360	Rule amended to change timing of proceedings.

EVIDENTIARY RULES AND RULES GOVERNING HEARINGS—APPLY TO ALL PROCEEDINGS WHERE HEARING HAS NOT BEGUN AS OF THE EFFECTIVE DATE OF THESE AMENDMENTS

Rule 180	Rule amended to allow the Commission or a hearing officer to exclude or summarily suspend a person for any portion of a deposition if the person engages in contemptuous conduct before either the Commission or a hearing officer.

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[184] For purposes of this section, the "date of these amended rules" means the date on the last page of this release.

[185] *See 1995 Release*, 60 FR at 32738 ("Any proceeding docketed by the Commission after the date of this **Federal Register** publication but prior to the effective date shall be conducted under the former Rules of Practice unless, within 30 days of the effective date, each respondent in the proceeding submits a request in writing to the Secretary that the proceeding be conducted under the Rules of Practice adopted today.").

[186] *See 1995 Release*, 60 FR at 32738.

[187] *See, e.g.*, Department of Labor, *Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges*, 80 FR 28767 (May 19, 2015), providing that the rules would be effective 30 days after publication.

[188] *See, e.g.*, Federal Trade Commission, *Revisions to Rules of Practice*, 80 FR 25940 (May 6, 2015), providing that the rules would generally apply to pending proceedings, as well as to newly instituted proceedings.

[189] Federal Rules of Civil Procedure, 2015 Amendments.

[190] Gibson.

[191] Under current Rule 161(c)(2)(i), proceedings may be stayed upon notification by the parties that they have agreed in principle to a settlement on all major terms. In the interest of prompt resolution of such proceedings, we are excluding such proceedings from the application of amended Rules 221, 233 and 360. Such proceedings would have been operating under the current rules, and should a stay in such a proceeding be lifted, we believe that application of these amended rules could result in unnecessary delays.

[192] All of the amended rules apply to proceedings instituted on or after the effective date of these amendments.

EVIDENTIARY RULES AND RULES GOVERNING HEARINGS—APPLY TO ALL PROCEEDINGS WHERE HEARING HAS NOT BEGUN AS OF THE EFFECTIVE DATE OF THESE AMENDMENTS—Continued

Rule 232	Rule amended to clarify standards for the issuance of subpoenas and motions to quash.
Rule 235	Standard for granting a motion to introduce prior sworn statement of a non-party witness.
Rule 320	Standard for admissibility of evidence.

RULE GOVERNING MOTIONS—APPLY TO ALL PROCEEDINGS PENDING AS OF THE EFFECTIVE DATE OF THESE AMENDMENTS

Rule 154	Rule governing motions and related filings, except where another rule expressly governs.

RULE GOVERNING EXTENSIONS OF TIME, POSTPONEMENTS, AND ADJOURNMENTS—APPLY TO ALL PROCEEDINGS PENDING AS OF THE EFFECTIVE DATE OF THESE AMENDMENTS

Rule 161	Rule governing extensions of time, postponements, and adjournments requested by parties—amended to allow a stay pending Commission consideration of settlement offers to also stay timelines set forth in Rule 360.

AMENDMENTS TO APPELLATE PROCEDURE RULES—APPLY TO APPEALS FILED ON OR AFTER THE EFFECTIVE DATE OF THESE AMENDMENTS

Rule 410	Procedure for filing petition for review.
Rule 411	Standards for granting petition for review and limitation on matters reviewed.
Rule 420	Appeals from SRO determinations.
Rule 440	Appeals from PCAOB determinations.
Rule 450	Briefs filed with the Commission.
Rule 900	Guidelines for timely completion of proceedings.

III. Economic Analysis

The Commission is sensitive to the economic effects that could result from the final rules, including the benefits and costs of the final rules, as well as effects on efficiency, competition, and capital formation. These quantitative and qualitative economic effects are discussed below.

In adopting these amendments, we seek to enhance flexibility in the conduct of administrative proceedings while maintaining the ability to timely and efficiently resolve administrative proceedings. The amendments include changes or clarifications to, among other things, the timing of hearings, the use of depositions, the filing of motions for summary disposition, and the submission of expert reports. The current rules governing administrative proceedings serve as the baseline against which we assess these final rules.

We continue to believe that there will not be significant economic consequences stemming from the amendments to Rules 141, 154, 161, 220, 230, 235, 320, 410, 411, 420, 440, 450, and 900. Thus, those sections are not discussed below. As explained in further detail below, we expect the amendments to Rules 222, 232, 233, 250, and 360 will have an impact on the costs and efficiency of administrative proceedings, but we do not expect them to significantly affect the efficiency of securities markets, competition, or capital formation.

A. Benefits, Costs, and Effects on Efficiency, Competition, and Capital Formation

As discussed in further detail above, the amendments to Rule 360 concern the timing for the various stages of an administrative proceeding, providing additional time for discovery. The amendments to Rule 233 permit a limited number of depositions, while the amendments to Rule 232 support this change by providing standards governing motions to quash or modify deposition notices or subpoenas. The amendments to Rule 222 concern requirements for a written report for expert witnesses. The amendments to Rule 250 clarify how dispositive motions will operate with the amendments to Rules 233 and 360 and provide the procedures and standards governing the various types of dispositive motions.

Current Commission rules set the prehearing period of a proceeding at approximately four months for a 300-day proceeding and do not permit parties to take depositions solely for the purpose of discovery. In addition, rules governing the testimony of expert witnesses have not previously been formalized, but some hearing officers require expert reports in proceedings before them.

We continue to believe that the aggregate benefits and costs of the final rules will depend, among other things, on the expected volume of administrative proceedings. For example, Rule 360 adjusts the potential timing of administrative proceedings, and an increase or a decrease in the number of administrative proceedings will scale up or down, respectively, the total magnitude of costs and benefits of the new timeline for administrative proceedings. Similarly, Rules 232 and 233 provide the framework for expanded use of depositions in administrative proceedings, and an increase or a decrease in the number of administrative proceedings may scale up or down, respectively, the total magnitude of the costs and benefits of the expanded use of depositions.

However, we are unable to precisely predict the economic effect of the final rules on administrative proceedings, as the number and type of proceedings can vary based on many factors unrelated to the Rules of Practice. Over the last three completed fiscal years, the number of new administrative proceedings initiated and not immediately settled has ranged from approximately 170 to approximately 230 proceedings, only a portion of which would be impacted by certain of the amended rules.[193] As a result, we are unable to quantify the overall costs and benefits expected to flow from the amended rules.

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[193] The total number of administrative proceedings initiated and not immediately settled

1. Amendments to Rules Governing Depositions and the Timing of Hearings in Administrative Proceedings

The amendments to Rules 232, 233, and 360, as described above, may benefit both respondents and the Division by providing them with additional time and tools to potentially discover additional relevant facts. Specifically, the amendments to Rule 233 permit respondents and the Division to notice the oral depositions of fact witnesses, expert witnesses and document custodians. The amendments to Rule 232 correspond with the new provisions for depositions in Rule 233 and establish the requirement that a proposed deponent be a fact witness, an expert witness, or a document custodian. The amendments to Rule 360 enlarge the potential maximum prehearing period. We anticipate that the potential for a longer maximum prehearing period would allow, in appropriate cases, additional time to review investigative records, conduct depositions under amended Rule 233, and prepare for a hearing.

These amendments may facilitate information acquisition during the prehearing stage, ultimately resulting in more focused hearings. We are unable to quantify these benefits, however, because any potential cost savings would depend on multiple factors, including the specific claims, facts, and defenses in a particular proceeding.

The depositions and a longer prehearing period will, however, impose additional costs compared to the current practice in administrative proceedings where, with limited exception, depositions are not permitted and maximum prehearing periods are shorter. We continue to believe that the costs of the adopted amendments will be borne by the Division as well as by respondents and deponents who provide deposition testimony. These costs will primarily stem from the potential costs of depositions and the extension of the maximum prehearing period.

Aggregate costs stemming from depositions depend on the number of depositions that respondents and the Division take and assume they attend depositions of third parties noticed by another party to the proceeding. Costs of depositions may include travel expenses, attorney's fees, and reporter and transcription expenses. Based on Commission staff experience, we estimate the cost to a respondent of conducting one non-expert deposition to be approximately $45,640, and the cost of conducting one expert witness deposition to be approximately $75,696.[194] This cost estimate has been increased relative to the cost estimate in the proposal to reflect the increased time-limit for depositions in amended Rule 233 from six hours to seven hours and to include the costs associated with expert depositions. In single-respondent proceedings, if both the Division and the respondent each take three depositions, one of which is of an expert witness, and each attend each other's depositions, then respondents may incur the cost of conducting or attending up to six depositions plus expert witness fees and costs—an estimated total of $303,896. Similarly, in multi-respondent proceedings, respondents may incur the cost of conducting or attending up to ten depositions plus expert witness fees and costs—an estimated total of $486,456. We recognize that respondents and the Division play a large role in managing their own costs by determining, for example, whether to take depositions or participate in the depositions of others, and whether to mitigate attorney costs, including by adjusting the number of attorneys attending each deposition, contracting with a competitively priced reporter, or arranging for less expensive travel. We note that determinations regarding the approach to requesting depositions will likely reflect parties' beliefs regarding the potential benefits they expect to realize from taking or attending depositions. However, the costs of depositions are borne by all attendees of the deposition, including not only the deposing party, but also the other parties to the proceeding, the deponent, and third parties, in the form of lost wages, travel, preparation, and attorney costs.[195]

Relative to the proposed amendments to Rule 233, the adopted amendments expand the potential use of depositions by allowing each side to request an additional two depositions from a hearing officer. This would place the ultimate limit on depositions at five depositions for each side in a single-respondent proceeding, and seven depositions for each side in a proceeding against multiple respondents. In single-respondent proceedings, if the Division and the respondent each take five depositions, one of which is of an expert witness, and each attend each other's depositions, then respondents may incur the cost of conducting or attending as many as ten depositions plus expert witness fees and costs—an estimated total of $486,456. Similarly, in multi-respondent proceedings, respondents may incur the cost of conducting or attending as many as fourteen depositions plus expert witness fees and costs—an estimated total of $669,016.[196] Although the total number of depositions increases, we believe that parties will make the decision to request an additional deposition by considering the expected costs and benefits of acquiring information from the deponent. To the extent that additional depositions may reveal important information or evidence relevant to the proceeding and thus lead to more focused hearings, this provision may improve the efficiency of administrative proceedings. However, neither the parties to a proceeding nor the hearing officer can predict whether additional depositions will ultimately have such an effect, and in situations where additional depositions ultimately prove to be unhelpful or unnecessary,

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each fiscal year encompasses various types of proceedings. These include proceedings under Section 12(j) of the Exchange Act and "follow-on" proceedings following certain injunctions or criminal convictions, which constitute the vast majority of all proceedings instituted. On average, approximately 20% of all administrative proceedings initiated over the last three completed fiscal years were designated as 300-day proceedings.

[194] The $45,640 estimate is comprised of the following expenses: (i) Travel expenses: $4,000; (ii) reporter/videographer: $8,200; and (iii) professional costs for two attorneys (including reasonable preparation for the deposition): 40 hours × $504/hr and 40 hours × $332/hr = $33,440. The hourly rates for the attorneys and paralegal are based on the 2015–2016 Laffey Matrix. The Laffey Matrix is a matrix of hourly rates for attorneys of varying experience levels and paralegals that is prepared annually by the Civil Division of the United States Attorney's Office for the District of Columbia. *See* Laffey Matrix—2015–2016, available at *https://www.justice.gov/usao-dc/file/796471/download* (last visited July 8, 2016) (the "Laffey Matrix"). In addition, if the deponent is an expert witness, we estimate the expert's fees and travel expenses will be approximately $30,056 per deposition, for a combined total of $75,696. This includes (i) file review and preparation costs estimated at 80 hours, at a rate of $333/hr, which totals $26,640; and (ii) expert fees incurred with appearing for the deposition, 8 hours × $427/hr = $3,416. The hourly rate for expert witnesses is based on survey data of expert witness fees from the SEAK, Inc. 2014 Survey of Expert Witness Fees. *See* SEAK, Inc. 2014 Survey of Expert Witness Fees, which can be found at *http://www.seak.com/wp-content/uploads/2014/07/Expert-Witness-Fee-Data.pdf* (last visited July 8, 2016). These estimates exclude transcription costs, which are estimated at $3.65 per page, based on the Federal Court Maximum Transcription Rates for Court Reporters, available at *http://www.uscourts.gov/services-forms/federal-court-reporting-program* (last visited July 8, 2016).

[195] Some witnesses who are deposed might bear little if any out-of-pocket cost if, for example, the deposition is conducted in the city in which they live or work, and they choose not be represented by counsel at the deposition. Moreover, the party seeking the deposition might choose to reimburse the witness for some costs.

[196] *See supra* note 194.

permitting those additional depositions may impose delays and costs that can have an adverse effect on efficiency.

Similarly, the longer maximum prehearing periods permitted by the amendment to Rule 360 may impose costs on the parties. Based on our estimates of staffing requirements and corresponding hourly rates, we estimate that the potential to lengthen the overall timeline in 120-day proceedings by up to six months to allow more time for discovery may result in additional costs to respondents of up to $754,080.[197] We thus estimate that the combined costs of the lengthened prehearing period and the availability of depositions could cost respondents in a single-respondent 120-day proceeding $1,240,536.[198] Similar combined costs for respondents in a 120-day multi-respondent proceeding could be as high as $1,423,096.[199] Again, however, we recognize that while a party is likely to take actions under the amended rules that result in these costs only to the extent that the party expects to receive benefits from a longer maximum prehearing period and the availability of depositions, actions taken by one party to a proceeding during the additional time for discovery may result in costs incurred by the other parties to the proceeding.

The amendments related to the timing of hearings and the use of depositions may also affect the efficiency of proceedings. To the extent that the adopted amendments facilitate the discovery of relevant facts and information through depositions and the extension of the maximum prehearing periods, they may lead to more expeditious resolution of proceedings. For example, for cases that may benefit significantly from the additional information, there could be efficiency gains from the final rules if the costs associated with the use of depositions are smaller than the value of the information gained from depositions. However, we note that because parties may not take into account the costs that depositions may impose on other individuals and/or entities, a potential consequence of the adopted amendments to Rule 233 is that parties may engage in more discovery than is efficient. For example, for proceedings that may not benefit significantly from information gained from a deposition, requesting depositions may result in inefficiency by imposing costs on all attendees of the deposition, including the deposing party, the other parties to the proceeding, the deponent, and third parties, without any significant informational benefit. However, we believe that the amendments to Rules 232 and 233 may mitigate the risk of this efficiency loss by setting forth standards for the issuance of subpoenas and motions to quash deposition notices and subpoenas, and setting a limit on the maximum number of depositions each side may notice.

Ultimately, it is difficult to predict with any certainty the economic efficiency gains, if any, from the addition of depositions, a longer prehearing period, and associated rule changes. At the same time, we recognize that there are necessarily cost increases from longer hearing periods and additional discovery tools, and as we have explained, those costs are borne by respondents and the Division, as well as other attendees of depositions, including deponents, and third parties. We continue to believe that any such costs are appropriate given the benefits of such rule changes.

2. Amendments Concerning Expert Reports and Testimony

The final amendments to Rule 222 specify a set of submissions and disclosures that hearing officers may require from parties to a proceeding, and require parties to a proceeding who intend to call expert witnesses to submit information about these expert witnesses. Though producing submissions and disclosures may cause parties to proceedings to incur costs, these amendments may yield benefits by facilitating access to information that may aid in interpreting statements, evidence, and testimony during hearings. We are aware that some hearing officers may currently require submissions and disclosures similar to those referenced in amended Rule 222, so the final rule will impose costs and yield benefits only to the extent that they result in additional information being submitted to hearing officers beyond that submitted under current practice.

3. Amendments Concerning Dispositive Motions

As discussed above, Rule 250 has been amended to provide that both sides to a proceeding shall be permitted, as a matter of right, to make certain dispositive motions in certain types of proceedings. The amendments to Rule 250 clarify how dispositive motions will operate in conjunction with the amendments to Rules 233 and 360, which permit parties to take depositions and provide for a longer maximum prehearing period.

Amended Rule 250 may improve the efficiency of administrative proceedings by eliminating unnecessary hearings. The ability of either side to bring a dispositive motion serves several functions, including those attendant to potential early resolution of claims. For example, in proceedings where the underlying facts are not in dispute, the granting of a dispositive motion may reduce the costs borne by all parties by narrowing the focus of or entirely eliminating the need for a hearing. On the other hand, where motions are filed in proceedings not susceptible to resolution via dispositive motion, the decision to allow dispositive motions could delay proceedings or otherwise result in inefficiencies. For example, if the hearing officer grants summary disposition, delays could result if the Commission subsequently remands the case for an evidentiary hearing. Such delays could result in costs to parties to the proceeding.

Because the amendments to Rule 250 largely clarify how pre-existing motion practice will operate alongside the amendments to Rules 233 and 360, the rule change may not result in a significant departure from current practice. Further, we cannot predict with certainty how practice will change in response to the availability of dispositive motions filed pursuant to amended Rules 250(a), (b), and (d) as a matter of right—rather than with leave of the hearing officer—given that parties will respond based on the individual facts of each case and their own cost estimates of filing the motions. We are thus unable to estimate the total potential costs associated with these amendments. Moreover, to the extent a party files a motion under amended Rule 250 where it would not have filed under previous Rule 250, we do not have sufficient information to quantify the individual costs associated with such a motion because the scope of each motion may vary significantly depending on the facts and circumstances of each case and the approach of the filing party.

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[197] The $754,080 estimate is comprised of the following expenses: (i) 1 senior attorney × 40 hours per week × 24 weeks × $504/hr = $483,840; (ii) 1 mid-level attorney × 20 hours per week × 24 weeks × $332/hr = $159,360; (iii) 1 paralegal × 30 hours per week × 24 weeks × $154/hr = $110,880. The hourly rates for the attorneys and paralegal are based on the Laffey Matrix. We do not anticipate the amendments to Rule 360 concerning the timing of hearings in 75-day and 30-day proceedings will generally result in a significant departure from current practice in the length of time necessary for completion of such proceedings, which often are resolved by default or summary disposition.

[198] $754,080 + $486,456 = $1,240,536. This estimate is comprised of the potential costs associated with the maximum lengthening of the prehearing period in 120-day proceedings and the total estimated costs of depositions in single-respondent proceedings. To the extent the hours spent during the prehearing period are used to prepare and/or respond to depositions, this may overestimate the total costs of a single-respondent proceeding.

[199] $754,080 + $669,016 = $1,423,096. As explained *supra,* this figure may overestimate the total costs in multi-respondent proceedings to the extent there is overlap with the hourly rate calculations associated with depositions.

B. Alternatives

As mentioned previously, although commenters generally supported extensions of the prehearing period previously proposed under Rule 360, some suggested that longer periods be adopted. Longer prehearing periods for discovery, whether restricted only to 120-day proceedings, or permitted for all proceedings as one commenter suggested, would allow parties more time to prepare for a hearing, but might adversely affect the timely and efficient resolution of administrative proceedings.

As alternatives to the final rule amending Rule 233, we could continue to permit depositions only when a witness is likely to be unable to attend or testify at a hearing, or we could authorize other limited discovery tools, such as the use of interrogatories or requests for admissions in lieu of depositions. Although alternatives such as interrogatories or admissions might reduce some of the costs of the discovery process (*i.e.*, the cost of depositions), they might entail other costs (resulting from the time attorneys and parties need to prepare responses) and also might yield less useful information for the administrative proceeding given the limited nature of questioning and information these forms permit. Therefore, regardless of their lower cost, interrogatories and other discovery tools may not provide the same qualitative benefits.

Commenters also suggested that the Commission allow even more depositions per side than proposed. As we have noted previously, permitting parties to the proceedings to take additional depositions may result in both benefits and costs for all parties. Additional depositions could lead to more focused hearings, but may impose costs on entities involved in the depositions, and ultimate resolution of the proceeding may be delayed. We believe that the final amendments to Rule 233 that permit the hearing officer to grant an additional two depositions to a side will make administrative proceedings flexible enough to realize the benefits of additional depositions when they are necessary, while avoiding unnecessarily delaying proceedings for additional depositions.

Another alternative to amended Rule 233 would be to adopt the proposed limit of three depositions per side for single-respondent proceedings and five depositions per side for multi-respondent proceedings and not permit the hearing officer to allow two additional depositions per side. As discussed previously, the informational benefit of each additional deposition would depend on the particulars of the administrative proceeding, and some proceedings may present unique challenges that warrant affording the parties additional opportunities to conduct prehearing depositions. The Commission believes that providing an opportunity for two additional depositions strikes a balance between the potential benefits from additional fact-finding and the corresponding impact on the overall goal of timely resolving administrative proceedings.

IV. Administrative Law Matters

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act,[200] that these revisions relate solely to agency organization, procedure, or practice. They are therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act [201] therefore does not apply.[202] Nonetheless, we previously determined that it would be useful to publish the rules for notice and comment before adoption. The Commission has considered all comments received. To the extent these rules relate to agency information collections during the conduct of administrative proceedings, they are exempt from review under the Paperwork Reduction Act.[203]

VI. Statutory Basis

These amendments to the Rules of Practice are being adopted pursuant to statutory authority granted to the Commission, including section 3 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7202; section 19 of the Securities Act, 15 U.S.C. 77s; sections 4A, 19, and 23 of the Exchange Act, 15 U.S.C. 78d–1, 78s, and 78w; section 319 of the Trust Indenture Act of 1939, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

Text of the Amendments

For the reasons set out in the preamble, 17 CFR part 201 is amended as follows:

PART 201—RULES OF PRACTICE

Subpart D—Rules of Practice

■ 1. The authority citation for part 201, subpart D, continues to read as follows:

Authority: 5 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 77sss, 77ttt, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78o(d), 78o–3, 78s, 78u–2, 78u–3, 78v, 78w, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

■ 2. Section 201.141 is amended by revising paragraphs (a)(2)(iv) and (v) and (a)(3) to read as follows:

§ 201.141 Orders and decisions: Service of orders instituting proceedings and other orders and decisions.

(a) * * *

(2) * * *

(iv) *Upon persons in a foreign country.* Notice of a proceeding to a person in a foreign country may be made by any of the following methods:

(A) Any method specified in paragraph (a)(2) of this section that is not prohibited by the law of the foreign country; or

(B) By any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(C) Any method that is reasonably calculated to give notice:

(*1*) As prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction; or

(*2*) As the foreign authority directs in response to a letter rogatory or letter of request; or

(*3*) Unless prohibited by the foreign country's law, by delivering a copy of the order instituting proceedings to the individual personally, or using any form of mail that the Secretary or the interested division addresses and sends to the individual and that requires a signed receipt; or

(D) By any other means not prohibited by international agreement, as the Commission or hearing officer orders.

(v) *In stop order proceedings.* Notwithstanding any other provision of paragraph (a)(2) of this section, in proceedings pursuant to Sections 8 or 10 of the Securities Act of 1933, 15 U.S.C. 77h or 77j, or Sections 305 or 307 of the Trust Indenture Act of 1939, 15 U.S.C. 77eee or 77ggg, notice of the institution of proceedings shall be made by personal service or confirmed telegraphic notice, or a waiver obtained pursuant to paragraph (a)(4) of this section.

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[200] 5 U.S.C. 553(b)(3)(A).

[201] 5 U.S.C. 601–612.

[202] *See* 5 U.S.C. 604.

[203] *See* 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4 (exempting collections during the conduct of administrative proceedings or investigations).

* * * * *

(3) *Record of service.* The Secretary shall maintain a record of service on parties (in hard copy or computerized format), identifying the party given notice, the method of service, the date of service, the address to which service was made, and the person who made service. If a division serves a copy of an order instituting proceedings, the division shall file with the Secretary either an acknowledgement of service by the person served or proof of service consisting of a statement by the person who made service certifying the date and manner of service; the names of the persons served; and their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service. If service is made in person, the certificate of service shall state, if available, the name of the individual to whom the order was given. If service is made by U.S. Postal Service certified or Express Mail, the Secretary shall maintain the confirmation of receipt or of attempted delivery, and tracking number. If service is made to an agent authorized by appointment to receive service, the certificate of service shall be accompanied by evidence of the appointment.

* * * * *

■ 3. Section 201.154 is amended by adding introductory text and revising the first sentence of paragraph (b) to read as follows:

§ 201.154. Motions.

The requirements in this section apply to motions and related filings except where another rule expressly governs.

* * * * *

(b) * * * Briefs in opposition to a motion shall be filed within five days after service of the motion. * * *

* * * * *

■ 4. Section 201.161 is amended by revising paragraph (c)(2)(iii) to read as follows:

§ 201.161 Extensions of time, postponements and adjournments.

* * * * *

(c) * * *

(2) * * *

(iii) The granting of any stay pursuant to this paragraph (c) shall stay the timeline pursuant to § 201.360(a).

■ 5. Section 201.180 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i), (a)(2), and (c) introductory text to read as follows:

§ 201.180 Sanctions.

(a) * * *

(1) *Subject to exclusion or suspension.* Contemptuous conduct by any person before the Commission or a hearing officer during any proceeding, including at or in connection with any conference, deposition or hearing, shall be grounds for the Commission or the hearing officer to:

(i) Exclude that person from such deposition, hearing or conference, or any portion thereof; and/or

* * * * *

(2) *Review procedure.* A person excluded from a deposition, hearing or conference, or a counsel summarily suspended from practice for the duration or any portion of a proceeding, may seek review of the exclusion or suspension by filing with the Commission, within three days of the exclusion or suspension order, a motion to vacate the order. The Commission shall consider such motion on an expedited basis as provided in § 201.500.

* * * * *

(c) *Failure to make required filing or to cure deficient filing.* The Commission or the hearing officer may enter a default pursuant to § 201.155, dismiss one or more claims, decide the particular claim(s) at issue against that person, or prohibit the introduction of evidence or exclude testimony concerning that claim if a person fails:

* * * * *

■ 6. Revise § 201.220 to read as follows:

§ 201.220 Answer to allegations.

(a) *When required.* In its order instituting proceedings, the Commission may require any respondent to file an answer to each of the allegations contained therein. Even if not so ordered, any respondent in any proceeding may elect to file an answer. Any other person granted leave by the Commission or the hearing officer to participate on a limited basis in such proceedings pursuant to § 201.210(c) may be required to file an answer.

(b) *When to file.* Except where a different period is provided by rule or by order, a respondent required to file an answer as provided in paragraph (a) of this section shall do so within 20 days after service upon the respondent of the order instituting proceedings. Persons granted leave to participate on a limited basis in the proceeding pursuant to § 201.210(c) may file an answer within a reasonable time, as determined by the Commission or the hearing officer. If the order instituting proceedings is amended, the Commission or the hearing officer may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

(c) *Contents; effect of failure to deny.* Unless otherwise directed by the hearing officer or the Commission, an answer shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the order instituting proceedings. When a party intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed admitted. A respondent must affirmatively state in the answer any avoidance or affirmative defense, including but not limited to res judicata and statute of limitations. In this regard, a respondent must state in the answer whether the respondent relied on the advice of counsel, accountants, auditors, or other professionals in connection with any claim, violation alleged or remedy sought. Failure to do so may be deemed a waiver.

(d) *Motion for more definite statement.* A respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(e) *Amendments.* A respondent may amend its answer at any time by written consent of each adverse party or with leave of the Commission or the hearing officer. Leave shall be freely granted when justice so requires.

(f) *Failure to file answer: Default.* If a respondent fails to file an answer required by this section within the time provided, such respondent may be deemed in default pursuant to § 201.155(a). A party may make a motion to set aside a default pursuant to § 201.155(b).

■ 7. Section 201.221 is amended by revising paragraph (c) to read as follows.

§ 201.221 Prehearing conference.

* * * * *

(c) *Subjects to be discussed.* At a prehearing conference consideration may be given and action taken with respect to any and all of the following:

(1) Simplification and clarification of the issues;

(2) Exchange of witness and exhibit lists and copies of exhibits;

(3) Timing of expert witness disclosures and reports, if any;

(4) Stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;

(5) Matters of which official notice may be taken;

(6) The schedule for exchanging prehearing motions or briefs, if any;

(7) The method of service for papers other than Commission orders;

(8) The filing of any motion pursuant to § 201.250;

(9) Settlement of any or all issues;

(10) Determination of hearing dates;

(11) Amendments to the order instituting proceedings or answers thereto;

(12) Production, and timing for completion of the production, of documents as set forth in § 201.230, and prehearing production of documents in response to subpoenas duces tecum as set forth in § 201.232;

(13) Specification of procedures as set forth in § 201.202;

(14) Depositions to be conducted, if any, and date by which depositions shall be completed; and

(15) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

* * * * *

■ 8. Section 201.222 is amended by revising the section heading and paragraph (b) to read as follows:

§ 201.222 Prehearing submissions and disclosures.

* * * * *

(b) *Expert witnesses*—(1) *Information to be supplied; reports.* Each party who intends to call an expert witness shall submit, in addition to the information required by paragraph (a)(4) of this section, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony during the previous four years, and a list of publications authored or co-authored by the expert in the previous ten years. Additionally, if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, then the party must include in the disclosure a written report—prepared and signed by the witness. The report must contain:

(i) A complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) The facts or data considered by the witness in forming them;

(iii) Any exhibits that will be used to summarize or support them; and

(iv) A statement of the compensation to be paid for the study and testimony in the case.

(2) *Drafts and communications protected.* (i) Drafts of any report or other disclosure required under this section need not be furnished regardless of the form in which the draft is recorded.

(ii) Communications between a party's attorney and the party's expert witness who is required to provide a report under this section need not be furnished regardless of the form of the communications, except if the communications relate to compensation for the expert's study or testimony, identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed, or identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

■ 9. Section 201.230 is amended by:

■ a. In paragraph (a)(1)(vi), removing the term "Division of Market Regulation" and adding in its place "Division of Trading and Markets";

■ b. Revising the paragraph (b) heading;

■ c. Removing "or" at the end of paragraph (b)(1)(iii);

■ d. Redesignating paragraph (b)(1)(iv) as paragraph (b)(1)(v) and adding a new paragraph (b)(1)(iv);

■ e. Redesignating paragraph (b)(2) as paragraph (b)(3) and adding a new paragraph (b)(2); and

■ f. In paragraph (c), removing the term "(b)(1)(i) through (b)(1)(iv)" and adding in its place "(b)(1)(i) through (v)" wherever it occurs.

The revision and additions read as follows:

§ 201.230 Enforcement and disciplinary proceedings: Availability of documents for inspection and copying.

* * * * *

(b) *Documents that may be withheld or redacted.*

(1) * * *

(iv) The document reflects only settlement negotiations between the Division of Enforcement and a person or entity who is not a respondent in the proceeding; or

* * * * *

(2) Unless the hearing officer orders otherwise upon motion, the Division of Enforcement may redact information from a document if:

(i) The information is among the categories set forth in paragraphs (b)(1)(i) through (v) of this section; or

(ii) The information consists of the following with regard to a person other than the respondent to whom the information is being produced:

(A) An individual's social-security number;

(B) An individual's birth date;

(C) The name of an individual known to be a minor; or

(D) A financial account number, taxpayer-identification number, credit card or debit card number, passport number, driver's license number, or state-issued identification number other than the last four digits of the number.

* * * * *

■ 10. Section 201.232 is amended by revising paragraphs (a) introductory text, (c), (d), (e), and (f) to read as follows:

§ 201.232 Subpoenas.

(a) *Availability; procedure.* In connection with any hearing ordered by the Commission or any deposition permitted under § 201.233, a party may request the issuance of subpoenas requiring the attendance and testimony of witnesses at such depositions or at the designated time and place of hearing, and subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place. Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing and served on each party pursuant to § 201.150. A person whose request for a subpoena has been denied or modified may not request that any other person issue the subpoena.

* * * * *

(c) *Service.* Service shall be made pursuant to the provisions of § 201.150(b) through (d). The provisions of this paragraph (c) shall apply to the issuance of subpoenas for purposes of investigations, as required by 17 CFR 203.8, as well as depositions and hearings.

(d) *Tender of fees required.* When a subpoena ordering the attendance of a person at a hearing or deposition is issued at the instance of anyone other than an officer or agency of the United States, service is valid only if the subpoena is accompanied by a tender to the subpoenaed person of the fees for one day's attendance and mileage specified by paragraph (f) of this section.

(e) *Application to quash or modify*—(1) *Procedure.* Any person to whom a subpoena or notice of deposition is directed, or who is an owner, creator or the subject of the documents that are to be produced pursuant to a subpoena, or any party may, prior to the time specified therein for compliance, but in no event more than 15 days after the date of service of such subpoena or notice, request that the subpoena or notice be quashed or modified. Such request shall be made by application filed with the Secretary and served on all parties pursuant to § 201.150. The party on whose behalf the subpoena or notice was issued may, within five days of service of the application, file an opposition to the application. If a hearing officer has been assigned to the proceeding, the application to quash shall be directed to that hearing officer for consideration, even if the subpoena or notice was issued by another person.

(2) *Standards governing application to quash or modify.* If compliance with the subpoena or notice of deposition would be unreasonable, oppressive, unduly burdensome or would unduly delay the hearing, the hearing officer or the Commission shall quash or modify the subpoena or notice, or may order a response to the subpoena, or appearance at a deposition, only upon specified conditions. These conditions may include but are not limited to a requirement that the party on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the cost of copying or transporting evidence to the place for return of the subpoena.

(3) *Additional standards governing application to quash deposition notices or subpoenas filed pursuant to § 201.233(a).* The hearing officer or the Commission shall quash or modify a deposition notice or subpoena filed or issued pursuant to § 201.233(a) unless the requesting party demonstrates that the deposition notice or subpoena satisfies the requirements of § 201.233(a), and:

(i) The proposed deponent was a witness of or participant in any event, transaction, occurrence, act, or omission that forms the basis for any claim asserted by the Division of Enforcement, any defense, or anything else required to be included in an answer pursuant to § 201.220(c) by any respondent in the proceeding (this excludes a proposed deponent whose only knowledge of these matters arises from the Division of Enforcement's investigation or the proceeding);

(ii) The proposed deponent is a designated as an "expert witness" under § 201.222(b); provided, however, that the deposition of an expert who is required to submit a written report under § 201.222(b) may only occur after such report is served; or

(iii) The proposed deponent has custody of documents or electronic data relevant to the claims or defenses of any party (this excludes Division of Enforcement or other Commission officers or personnel who have custody of documents or data that was produced by the Division to the respondent).

(f) *Witness fees and mileage.* Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear. Except for such witness fees and mileage, each party is responsible for paying any fees and expenses of the expert witnesses whom that party designates under § 201.222(b), for appearance at any deposition or hearing.

■ 11. Section 201.233 is revised to read as follows:

§ 201.233 Depositions upon oral examination.

(a) *Depositions upon written notice.* In any proceeding under the 120-day timeframe designated pursuant to § 201.360(a)(2), depositions upon written notice may be taken as set forth in this paragraph. No other depositions shall be permitted except as provided in paragraph (b) of this section.

(1) If the proceeding involves a single respondent, the respondent may file written notices to depose no more than three persons, and the Division of Enforcement may file written notices to depose no more than three persons.

(2) If the proceeding involves multiple respondents, the respondents collectively may file joint written notices to depose no more than five persons, and the Division of Enforcement may file written notices to depose no more than five persons. The depositions taken under this paragraph (a)(2) shall not exceed a total of five depositions for the Division of Enforcement, and five depositions for all respondents collectively.

(3) *Additional depositions upon motion.* Any side may file a motion with the hearing officer seeking leave to notice up to two additional depositions beyond those permitted pursuant to paragraphs (a)(1) and (2) of this section.

(i) *Procedure.* (A) A motion for additional depositions must be filed no later than 90 days prior to the hearing date. Any party opposing the motion may submit an opposition within five days after service of the motion. No reply shall be permitted. The motion and any oppositions each shall not exceed seven pages in length. These limitations exclusively govern motions under this section; notwithstanding § 201.154(a), any points and authorities shall be included in the motion or opposition, with no separate statement of points and authorities permitted, and none of the requirements in § 201.154(b) or (c) shall apply.

(B) Upon consideration of the motion and any opposing papers, the hearing officer will issue an order either granting or denying the motion. The hearing officer shall consider the motion on an expedited basis.

(C) The proceeding shall not automatically be stayed pending the determination of the motion.

(ii) *Grounds and standards for motion.* A motion under this paragraph (a)(3) shall not be granted unless the additional depositions satisfy § 201.232(e) and the moving side demonstrates a compelling need for the additional depositions by:

(A) Identifying each of the witnesses whom the moving side plans to depose pursuant to paragraph (a)(1) or (2) of this section as well as the additional witnesses whom the side seeks to depose;

(B) Describing the role of each witness and proposed additional witness;

(C) Describing the matters concerning which each witness and proposed additional witness is expected to be questioned, and why the deposition of each witness and proposed additional witness is necessary for the moving side's arguments, claims, or defenses; and

(D) Showing that the additional deposition(s) requested will not be unreasonably cumulative or duplicative.

(iii) If the moving side proposes to take and submit the additional deposition(s) on written questions, as provided in § 201.234, the motion shall so state. The motion for additional depositions shall constitute a motion under § 201.234(a), and the moving party is required to submit its questions with its motion under this rule. The procedures for such a deposition shall be governed by § 201.234.

(4) A deponent's attendance may be ordered by subpoena issued pursuant to the procedures in § 201.232; and

(5) The Commission or hearing officer may rule on a motion that a deposition noticed under paragraph (a)(1) or (2) of this section shall not be taken upon a determination under § 201.232(e). The fact that a witness testified during an investigation does not preclude the deposition of that witness.

(b) *Depositions when witness is unavailable.* In addition to depositions permitted under paragraph (a) of this section, the Commission or the hearing officer may grant a party's request to file a written notice of deposition if the requesting party shows that the prospective witness will likely give testimony material to the proceeding; that it is likely the prospective witness, who is then within the United States, will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment, other disability, or absence from the United States, unless it appears that the absence of the witness was procured by the party requesting the deposition; and that the taking of a deposition will serve the interests of justice.

(c) *Service and contents of notice.* Notice of any deposition pursuant to this section shall be made in writing and served on each party pursuant to § 201.150. A notice of deposition shall designate by name a deposition officer. The deposition officer may be any person authorized to administer oaths by the laws of the United States or of the place where the deposition is to be held. A notice of deposition also shall state:

(1) The name and address of the witness whose deposition is to be taken;

(2) The time and place of the deposition; provided that a subpoena for a deposition may command a person to attend a deposition only as follows:

(i) Within 100 miles of where the person resides, is employed, or regularly transacts business in person;

(ii) Within the state where the person resides, is employed, or regularly transacts business in person, if the person is a party or a party's officer;

(iii) At such other location that the parties and proposed deponent stipulate; or

(iv) At such other location that the hearing officer or the Commission determines is appropriate; and

(3) The manner of recording and preserving the deposition.

(d) *Producing documents.* In connection with any deposition pursuant to this section, a party may request the issuance of a subpoena duces tecum under § 201.232. The party conducting the deposition shall serve upon the deponent any subpoena duces tecum so issued. The materials designated for production, as set out in the subpoena, must be listed in the notice of deposition.

(e) *Method of recording*—(1) *Method stated in the notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the hearing officer or Commission orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition, at that party's expense. Each party shall bear its own costs for obtaining copies of any transcripts or audio or audiovisual recordings.

(2) *Additional method.* With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the hearing officer or the Commission orders otherwise.

(f) *By remote means.* The parties may stipulate—or the hearing officer or Commission may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this section, the deposition takes place where the deponent answers the questions.

(g) *Deposition officer's duties*—(1) *Before the deposition.* The deposition officer designated pursuant to paragraph (c) of this section must begin the deposition with an on-the-record statement that includes:

(i) The deposition officer's name and business address;

(ii) The date, time, and place of the deposition;

(iii) The deponent's name;

(iv) The deposition officer's administration of the oath or affirmation to the deponent; and

(v) The identity of all persons present.

(2) *Conducting the deposition; avoiding distortion.* If the deposition is recorded non-stenographically, the deposition officer must repeat the items in paragraphs (g)(1)(i) through (iii) of this section at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(3) *After the deposition.* At the end of a deposition, the deposition officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(h) *Order and record of the examination*—(1) *Order of examination.* The examination and cross-examination of a deponent shall proceed as they would at the hearing. After putting the deponent under oath or affirmation, the deposition officer must record the testimony by the method designated under paragraph (e) of this section. The testimony must be recorded by the deposition officer personally or by a person acting in the presence and under the direction of the deposition officer. The witness being deposed may have counsel present during the deposition.

(2) *Form of objections stated during the deposition.* An objection at the time of the examination—whether to evidence, to a party's conduct, to the deposition officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination shall still proceed and the testimony shall be taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the hearing officer or the Commission, or to present a motion to the hearing officer or the Commission for a limitation on the questioning in the deposition.

(i) *Waiver of objections*—(1) *To the notice.* An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) *To the deposition officer's qualification.* An objection based on disqualification of the deposition officer before whom a deposition is to be taken is waived if not made:

(i) Before the deposition begins; or

(ii) Promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) *To the taking of the deposition*—(i) *Objection to competence, relevance, or materiality.* An objection to a deponent's competence—or to the competence, relevance, or materiality of testimony—is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(ii) *Objection to an error or irregularity.* An objection to an error or irregularity at an oral examination is waived if:

(A) It relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(B) It is not timely made during the deposition.

(4) *To completing and returning the deposition.* An objection to how the deposition officer transcribed the testimony—or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition—is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

(j) *Duration; cross-examination; motion to terminate or limit*—(1) *Duration.* Unless otherwise stipulated or ordered by the hearing officer or the Commission, a deposition is limited to one day of seven hours, including cross-examination as provided in this subsection. In a deposition conducted by or for a respondent, the Division of Enforcement shall be allowed a reasonable amount of time for cross-examination of the deponent. In a deposition conducted by the Division, the respondents collectively shall be allowed a reasonable amount of time for cross-examination of the deponent. The hearing officer or the Commission may allow additional time if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Motion to terminate or limit*—(i) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to present the motion to the hearing officer or the Commission.

(ii) *Order.* Upon a motion under paragraph (j)(2)(i) of this section, the hearing officer or the Commission may order that the deposition be terminated or may limit its scope. If terminated, the deposition may be resumed only by order of the hearing officer or the Commission.

(k) *Review by the witness; changes*—(1) *Review; statement of changes.* On request by the deponent or a party before the deposition is completed, and unless otherwise ordered by the hearing officer or the Commission, the deponent must be allowed 14 days after being notified by the deposition officer that the transcript or recording is available, unless a longer time is agreed to by the parties or permitted by the hearing officer, in which:

(i) To review the transcript or recording; and

(ii) If there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes indicated in the deposition officer's certificate.* The deposition officer must note in the certificate prescribed by paragraph (l)(1) of this section whether a review was requested and, if so, must attach any changes the deponent makes during the 14-day period.

(l) *Certification and delivery; exhibits; copies of the transcript or recording*—(1) *Certification and delivery.* The deposition officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the hearing officer orders otherwise, the deposition officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney or party who arranged for the transcript or recording. The attorney or party must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and tangible things*—(i) *Originals and copies.* Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(A) Offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(B) Give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

(ii) *Order regarding the originals.* Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) *Copies of the transcript or recording.* Unless otherwise stipulated or ordered by the hearing officer or Commission, the deposition officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the deposition officer must furnish a copy of the transcript or recording to any party or the deponent, as directed by the party or person paying such charges.

(m) *Presentation of objections or disputes.* Any party seeking relief with respect to disputes over the conduct of a deposition may file a motion with the hearing officer to obtain relief as permitted by this part.

■ 12. Section 201.234 is amended by revising paragraphs (a) and (c) to read as follows:

§ 201.234 Depositions upon written questions.

(a) *Availability.* Any deposition permitted under § 201.233 may be taken and submitted on written questions upon motion of any party, for good cause shown, or as stipulated by the parties.

* * * * *

(c) *Additional requirements.* The order for deposition, filing of the deposition, form of the deposition and use of the deposition in the record shall be governed by paragraphs (c) through (l) of § 201.233, except that no cross-examination shall be made.

■ 13. Section 201.235 is amended by revising the section heading and paragraphs (a) introductory text, (a)(2), (4), and (5) and adding paragraph (b) to read as follows:

§ 201.235 Introducing prior sworn statements or declarations.

(a) At a hearing, any person wishing to introduce a prior, sworn deposition taken pursuant to § 201.233 or § 201.234, investigative testimony, or other sworn statement or a declaration pursuant to 28 U.S.C. 1746, of a witness, not a party, otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. If only part of a statement or declaration is offered in evidence, the hearing officer may require that all relevant portions of the statement or declaration be introduced. If all of a statement or declaration is offered in evidence, the hearing officer may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement or declaration may be granted if:

* * * * *

(2) The witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement or declaration;

* * * * *

(4) The party offering the prior sworn statement or declaration has been unable to procure the attendance of the witness by subpoena; or

(5) In the discretion of the Commission or the hearing officer, it would be desirable, in the interests of justice, to allow the prior sworn statement or declaration to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement or declaration in lieu of live testimony, consideration shall also be given to the convenience of the parties in avoiding unnecessary expense.

(b) *Sworn statement or declaration of party or agent.* An adverse party may use for any purpose a deposition taken pursuant to § 201.233 or § 201.234, investigative testimony, or other sworn statement or a declaration pursuant to 28 U.S.C. 1746, of a party or anyone who, when giving the sworn statement or declaration, was the party's officer, director, or managing agent.

■ 14. Section 201.250 is revised to read as follows:

§ 201.250 Dispositive motions.

(a) *Motion for a ruling on the pleadings.* No later than 14 days after a respondent's answer has been filed, any party may move for a ruling on the pleadings on one or more claims or defenses, asserting that, even accepting all of the non-movant's factual allegations as true and drawing all reasonable inferences in the non-movant's favor, the movant is entitled to a ruling as a matter of law. The hearing officer shall promptly grant or deny the motion.

(b) *Motion for summary disposition in 30- and 75-day proceedings.* In any proceeding under the 30- or 75-day timeframe designated pursuant to § 201.360(a)(2), after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to § 201.230, any party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, documentary evidence or facts officially noted pursuant to § 201.323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law. The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

(c) *Motion for summary disposition in 120-day proceedings.* In any proceeding under the 120-day timeframe designated pursuant to § 201.360(a)(2), after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying pursuant to § 201.230, a party may make a motion for summary disposition on one or more claims or defenses, asserting that the undisputed pleaded facts, declarations, affidavits, deposition transcripts, documentary evidence or facts officially noted pursuant to § 201.323 show that there is no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law. A motion for summary disposition shall be made only with leave of the hearing officer. Leave shall be granted only for good cause shown and if consideration of the motion will not delay the scheduled start of the hearing. The hearing officer shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. If it appears that a party, for good cause shown, cannot present prior to the hearing facts essential to justify opposition to the motion, the hearing officer shall deny or defer the motion.

(d) *Motion for a ruling as a matter of law following completion of case in chief.* Following the interested division's presentation of its case in chief, any party may make a motion, asserting that the movant is entitled to a ruling as a matter of law on one or more claims or defenses.

(e) *Length limitation for dispositive motions.* Dispositive motions, together with any supporting memorandum of points and authorities (exclusive of any declarations, affidavits, deposition transcripts or other attachments), shall not exceed 9,800 words. Requests for leave to file motions and accompanying documents in excess of 9,800 words are disfavored. A double-spaced motion that does not, together with any accompanying memorandum of points and authorities, exceed 35 pages in length, inclusive of pleadings incorporated by reference (but excluding any declarations, affidavits, deposition transcripts or attachments) in the dispositive motion, is presumptively considered to contain no more than 9,800 words. Any motion that exceeds this page limit must include a certificate by the attorney, or an unrepresented party, stating that the brief complies with the word limit set forth in this paragraph and stating the number of words in the motion. The person preparing the certificate may rely on the word count of a word-processing program to prepare the document.

(f) *Opposition and reply length limitations* and *response time.* A non-moving party may file an opposition to a dispositive motion and the moving party may thereafter file a reply.

(1) *Length limitations.* Any opposition must comply with the length limitations applicable to the movant's motion as set forth in paragraph (e) of this section. Any reply must comply with the length limitations set forth in § 201.154(c).

(2) *Response time.* (i) For motions under paragraphs (a), (b), and (d) of this section, the response times set forth in § 201.154(b) apply to any opposition and reply briefs.

(ii) For motions under paragraph (c) of this section, any opposition must be filed within 21 days after service of such a motion, and any reply must be filed within seven days after service of any opposition.

■ 15. Section 201.320 is revised to read as follows:

§ 201.320 Evidence: Admissibility.

(a) Except as otherwise provided in this section, the Commission or the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unreliable.

(b) Subject to § 201.235, evidence that constitutes hearsay may be admitted if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair.

■ 16. Section 201.360 is amended by revising the section heading and paragraphs (a)(2) and (3), (b) introductory text, and (c) to read as follows:

§ 201.360 Initial decision of hearing officer and timing of hearing.

(a) * * *

(2) *Time period for filing initial decision and for hearing*—(i) *Initial decision.* In the order instituting proceedings, the Commission will specify a time period in which the hearing officer's initial decision must be filed with the Secretary. In the Commission's discretion, after consideration of the nature, complexity, and urgency of the subject matter, and with due regard for the public interest and the protection of investors, this time period will be either 30, 75, or 120 days. The time period will run from the occurrence of the following events:

(A) The completion of post-hearing briefing in a proceeding where the hearing has been completed; or

(B) The completion of briefing on a § 201.250 motion in the event the hearing officer has determined that no hearing is necessary; or

(C) The determination by the hearing officer that, pursuant to § 201.155, a party is deemed to be in default and no hearing is necessary.

(ii) *Hearing.* Under the 120-day timeline, the hearing officer shall issue an order scheduling the hearing to begin approximately four months (but no more than ten months) from the date of service of the order instituting the proceeding. Under the 75-day timeline, the hearing officer shall issue an order scheduling the hearing to begin approximately 2-½ months (but no more than six months) from the date of service of the order instituting the proceeding. Under the 30-day timeline, the hearing officer shall issue an order scheduling the hearing to begin approximately one month (but no more than four months) from the date of service of the order instituting the proceeding. These deadlines confer no substantive rights on respondents. If a stay is granted pursuant to § 201.161(c)(2)(i) or § 201.210(c)(3), the time period specified in the order instituting proceedings in which the hearing officer's initial decision must be filed with the Secretary, as well as any other time limits established in orders issued by the hearing officer in the proceeding, shall be automatically tolled during the period while the stay is in effect.

(3) *Certification of extension; motion for extension.* (i) In the event that the hearing officer presiding over the proceeding determines that it will not be possible to file the initial decision within the specified period of time, the hearing officer may certify to the Commission in writing the need to extend the initial decision deadline by up to 30 days for case management purposes. The certification must be issued no later than 30 days prior to the expiration of the time specified for the issuance of an initial decision and be served on the Commission and all parties in the proceeding. If the Commission has not issued an order to the contrary within 14 days after receiving the certification, the extension set forth in the hearing officer's certification shall take effect.

(ii) Either in addition to a certification of extension, or instead of a certification of extension, the Chief Administrative Law Judge may submit a motion to the Commission requesting an extension of the time period for filing the initial decision. First, the hearing officer presiding over the proceeding must consult with the Chief Administrative Law Judge. Following such consultation, the Chief Administrative Law Judge may determine, in his or her discretion, to submit a motion to the Commission requesting an extension of the time period for filing the initial decision. This motion may request an extension of any length but must be filed no later than 15 days prior to the expiration of the time specified in the certification of extension, or if there is no certification of extension, 30 days prior to the expiration of the time specified in the order instituting proceedings. The motion will be served upon all parties in the proceeding, who may file with the Commission statements in support of or in opposition to the motion. If the Commission determines that additional time is necessary or appropriate in the public interest, the Commission shall issue an order extending the time period for filing the initial decision.

(iii) The provisions of this paragraph (a)(3) confer no rights on respondents.

(b) *Content.* An initial decision shall include findings and conclusions, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and the appropriate order, sanction, relief, or denial thereof. The initial decision shall also state the time period, not to exceed 21 days after service of the decision, except for good cause shown, within which a petition for review of the initial decision may be filed. The reasons for any extension of time shall be stated in the initial decision. The initial decision shall also include a statement that, as provided in paragraph (d) of this section:

* * * * *

(c) *Filing, service and publication.* The Secretary shall promptly serve the initial decision upon the parties and shall promptly publish notice of the filing thereof on the SEC Web site. Thereafter, the Secretary shall publish the initial decision in the SEC Docket; provided, however, that in nonpublic proceedings no notice shall be published unless the Commission otherwise directs.

* * * * *

■ 17. Section 201.410 is amended by revising paragraph (b), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 201.410 Appeal of initial decisions by hearing officers.

* * * * *

(b) *Procedure.* The petition for review of an initial decision shall be filed with the Commission within such time after service of the initial decision as prescribed by the hearing officer pursuant to § 201.360(b) unless a party has filed a motion to correct an initial decision with the hearing officer. If such correction has been sought, a party shall have 21 days from the date of the hearing officer's order resolving the motion to correct to file a petition for review. The petition shall set forth a statement of the issues presented for review under § 201.411(b). In the event a petition for review is filed, any other party to the proceeding may file a cross-petition for review within the original time allowed for seeking review or within ten days from the date that the petition for review was filed, whichever is later.

(c) *Length limitation.* Except with leave of the Commission, the petition for review shall not exceed three pages in length. Incorporation of pleadings or filings by reference into the petition is not permitted. Motions to file petitions in excess of those limitations are disfavored.

* * * * *

■ 18. Section 201.411 is amended by:

■ a. In paragraph (c), removing the term "§ 210.410(b)" and adding in its place "§ 201.410(b)"; and

■ b. Revising paragraph (d).

The revision reads as follows:

§ 201.411 Commission consideration of initial decisions by hearing officers.

* * * * *

(d) *Limitations on matters reviewed.* Review by the Commission of an initial decision shall be limited to the issues specified in an opening brief that complies with § 201.450(b), or the issues, if any, specified in the briefing schedule order issued pursuant to § 201.450(a). Any exception to an initial decision not supported in an opening brief that complies with § 201.450(b) may, at the discretion of the Commission, be deemed to have been waived by the petitioner. On notice to all parties, however, the Commission may, at any time prior to issuance of its decision, raise and determine any other matters that it deems material, with opportunity for oral or written argument thereon by the parties.

* * * * *

■ 19. Section 201.420 is amended by:

■ a. Revising paragraph (a); and

■ b. Adding a sentence to the end of paragraph (c).

The revision and addition read as follows:

§ 201.420 Appeal of determinations by self-regulatory organizations.

(a) *Application for review; when available.* An application for review by the Commission may be filed by any person who is aggrieved by a determination of a self-regulatory organization with respect to any:

(1) Final disciplinary sanction;

(2) Denial or conditioning of membership or participation;

(3) Prohibition or limitation in respect to access to services offered by that self-regulatory organization or a member thereof; or

(4) Bar from association as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1).

* * * * *

(c) * * * Any exception to a determination not supported in an opening brief that complies with § 201.450(b) may, at the discretion of the Commission, be deemed to have been waived by the applicant.

* * * * *

■ 20. Section 201.440 is amended by revising paragraph (b) to read as follows:

§ 201.440 Appeal of determinations by the Public Company Accounting Oversight Board.

* * * * *

(b) *Procedure.* An aggrieved person may file an application for review with the Commission pursuant to § 201.151 within 30 days after the notice filed by the Board of its determination with the Commission pursuant to 17 CFR 240.19d–4 is received by the aggrieved person applying for review. The applicant shall serve the application on the Board at the same time. The application shall identify the determination complained of, set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor, and state an address where the applicant can be served. The application should not exceed two pages in length. The notice of appearance required by § 201.102(d) shall accompany the application. Any exception to a determination not supported in an opening brief that complies with § 201.450(b) may, at the discretion of the Commission, be deemed to have been waived by the applicant.

* * * * *

■ 21. Section 201.450 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 201.450 Briefs filed with the Commission.

* * * * *

(b) *Contents of briefs.* Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, or by citation to the record. Reply briefs shall be confined to matters in opposition briefs of other parties; except as otherwise determined by the Commission in its discretion, any argument raised for the first time in a reply brief shall be deemed to have been waived.

(c) *Length limitation.* Except with leave of the Commission, opening and opposition briefs shall not exceed 14,000 words and reply briefs shall not exceed 7,000 words, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, and exhibits. Incorporation of pleadings or filings by reference into briefs submitted to the Commission is not permitted. Motions to file briefs in excess of these limitations are disfavored.

(d) *Certificate of compliance.* An opening or opposition brief that does not exceed 30 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, is presumptively considered to contain no more than 14,000 words. A reply brief that does not exceed 15 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits is presumptively considered to contain no more than 7,000 words. Any brief that exceeds these page limits must include a certificate by the party's representative, or an unrepresented party, stating that the brief complies with the requirements set forth in paragraph (c) of this section and stating the number of words in the brief. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief.

■ 22. Section 201.900 is revised to read as follows:

§ 201.900 Informal procedures and supplementary information concerning adjudicatory proceedings.

(a) *Guidelines for the timely completion of proceedings.* (1) Timely resolution of adjudicatory proceedings is one factor in assessing the effectiveness of the adjudicatory program in protecting investors, promoting public confidence in the securities markets and assuring respondents a fair hearing. Establishment of guidelines for the timely completion of key phases of contested administrative proceedings provides a standard for both the Commission and the public to gauge the Commission's adjudicatory program on this criterion. The Commission has directed that:

(i) To the extent possible, a decision by the Commission on review of an interlocutory matter should be completed within 45 days of the date set for filing the final brief on the matter submitted for review.

(ii) To the extent possible, a decision by the Commission on a motion to stay a decision that has already taken effect or that will take effect within five days of the filing of the motion, should be issued within five days of the date set for filing of the opposition to the motion for a stay. If the decision complained of has not taken effect, the Commission's decision should be issued within 45 days of the date set for filing of the opposition to the motion for a stay.

(iii) Ordinarily, a decision by the Commission with respect to an appeal from the initial decision of a hearing officer, a review of a determination by a self-regulatory organization or the Public Company Accounting Oversight Board, or a remand of a prior Commission decision by a court of appeals will be issued within eight months from the completion of briefing on the petition for review, application for review, or remand order. If the Commission determines that the complexity of the issues presented in a petition for review, application for review, or remand order warrants additional time, the decision of the Commission in that matter may be issued within ten months of the completion of briefing.

(iv) If the Commission determines that a decision by the Commission cannot be issued within the period specified in paragraph (a)(1)(iii) of this section, the Commission may extend that period by orders as it deems appropriate in its discretion. The guidelines in this paragraph (a) confer no rights or entitlements on parties or other persons.

(2) The guidelines in this paragraph (a) do not create a requirement that each portion of a proceeding or the entire proceeding be completed within the periods described. Among other reasons, Commission review may require additional time because a matter is unusually complex or because the record is exceptionally long. In addition, fairness is enhanced if the Commission's deliberative process is not constrained by an inflexible schedule. In some proceedings, deliberation may be delayed by the need to consider more urgent matters, to permit the preparation of dissenting opinions, or for other good cause. The guidelines will be used by the Commission as one of several criteria in monitoring and evaluating its adjudicatory program. The guidelines will be examined periodically, and, if necessary, readjusted in light of changes

in the pending caseload and the available level of staff resources.

(b) *Reports to the Commission on pending cases.* The administrative law judges, the Secretary and the General Counsel have each been delegated authority to issue certain orders or adjudicate certain proceedings. *See* 17 CFR 200.30–1 through 200.30–18. Proceedings are also assigned to the General Counsel for the preparation of a proposed order or opinion which will then be recommended to the Commission for consideration. In order to improve accountability by and to the Commission for management of the docket, the Commission has directed that confidential status reports with respect to all filed adjudicatory proceedings shall be made periodically to the Commission. These reports will be made through the Secretary, with a minimum frequency established by the Commission. In connection with these periodic reports, if a proceeding pending before the Commission has not been concluded within 30 days of the guidelines established in paragraph (a) of this section, the General Counsel shall specifically apprise the Commission of that fact, and shall describe the procedural posture of the case, project an estimated date for conclusion of the proceeding, and provide such other information as is necessary to enable the Commission to make a determination under paragraph (a)(1)(iv) of this section or to determine whether additional steps are necessary to reach a fair and timely resolution of the matter.

(c) *Publication of information concerning the pending case docket.* Ongoing disclosure of information about the adjudication program caseload increases awareness of the importance of the program, facilitates oversight of the program and promotes confidence in the efficiency and fairness of the program by investors, securities industry participants, self-regulatory organizations and other members of the public. The Commission has directed the Secretary to publish in the first and seventh months of each fiscal year summary statistical information about the status of pending adjudicatory proceedings and changes in the Commission's caseload over the prior six months. The report will include the number of cases pending before the administrative law judges and the Commission at the beginning and end of the six-month period. The report will also show increases in the caseload arising from new cases being instituted, appealed or remanded to the Commission and decreases in the caseload arising from the disposition of proceedings by issuance of initial decisions, issuance of final decisions issued on appeal of initial decisions, other dispositions of appeals of initial decisions, final decisions on review of self-regulatory organization determinations, other dispositions on review of self-regulatory organization determinations, and decisions with respect to stays or interlocutory motions. For each category of decision, the report shall also show the median age of the cases at the time of the decision, the number of cases decided within the guidelines for the timely completion of adjudicatory proceedings, and, with respect to appeals from initial decisions, reviews of determinations by self-regulatory organizations or the Public Company Accounting Oversight Board, and remands of prior Commission decisions, the median days from the completion of briefing to the time of the Commission's decision.

By the Commission.

Dated: July 13, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–16987 Filed 7–28–16; 8:45 am]

BILLING CODE 8011–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
1985

FEDERAL REGISTER

Vol. 81 Friday,
No. 146 July 29, 2016

Part V

Department of Homeland Security

8 CFR Parts 103 and 212
Expansion of Provisional Unlawful Presence Waivers of Inadmissibility;
Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103 and 212

[CIS No. 2557–2014; DHS Docket No. USCIS–2012–0003]

RIN 1615–AC03

Expansion of Provisional Unlawful Presence Waivers of Inadmissibility

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: This final rule, consistent with the Immigration and Nationality Act (INA), expands the class of individuals who may be eligible for a provisional waiver of certain grounds of inadmissibility based on the accrual of unlawful presence in the United States. The provisional unlawful presence waiver ("provisional waiver") process allows certain individuals who are present in the United States to request from U.S. Citizenship and Immigration Services (USCIS) a provisional waiver of these grounds of inadmissibility before departing the United States for consular processing of their immigrant visas—rather than applying for a waiver abroad after their immigrant visa interviews using the Form I–601, Waiver of Grounds of Inadmissibility ("Form I–601 waiver process"). The provisional waiver process is designed to encourage unlawfully present individuals to leave the United States, attend their immigrant visa interviews, and return to the United States legally to reunite with their U.S. citizen or lawful permanent resident (LPR) family members. Having an approved provisional waiver helps facilitate immigrant visa issuance at DOS, streamlines both the waiver and the immigrant visa processes, and reduces the time that applicants are separated from their U.S. citizen or LPR family members, thus promoting family unity. The rule is intended to encourage eligible individuals to complete the immigrant visa process abroad, promote family unity, and improve administrative efficiency.

DATES: This final rule is effective August 29, 2016.

FOR FURTHER INFORMATION CONTACT: Roselyn Brown-Frei, Office of Policy and Strategy, Residence and Naturalization Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2099, Telephone (202) 272–8377 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: This final rule adopts the proposed rule that the Department of Homeland Security (DHS) published on July 22, 2015, with changes made in response to comments received. This final rule provides that eligibility for the provisional waiver will no longer be limited to the subset of statutorily qualified individuals who seek to immigrate as immediate relatives of U.S. citizens [1] and who can show that denial of admission will result in extreme hardship to a U.S. citizen spouse or parent. Rather, this final rule makes eligibility for the provisional waiver available to all individuals who are statutorily eligible for a waiver of the unlawful presence grounds of inadmissibility. Under this final rule, such an individual must go abroad to obtain an immigrant visa, establish that denial of admission will result in extreme hardship to a U.S. citizen or LPR spouse or parent, establish that his or her case warrants a favorable exercise of discretion, and meet all other regulatory requirements. Eligibility for the provisional waiver will also extend to the spouses and children who accompany or follow to join principal immigrants. The rule is intended to encourage eligible individuals to complete the immigrant visa process abroad, promote family unity, and improve administrative efficiency. DHS believes that this rule will reduce overall immigrant visa processing times for eligible immigrant visa applicants; encourage individuals who are unlawfully present in the United States to seek lawful status after departing the country; save resources and time for the Department of State (DOS), DHS, and the individual; and reduce the hardship that U.S. citizen and LPR family members of individuals seeking the provisional waiver may experience as a result of the immigrant visa process.

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I. Executive Summary

A. Purpose of the Regulatory Action

This final rule, consistent with the INA, expands the provisional unlawful presence waiver process (hereinafter "provisional waiver process"), which specifies how an individual may be eligible to receive a provisional waiver of his or her inadmissibility for accrual of unlawful presence prior to departing the United States for processing of an immigrant visa application at a U.S. embassy or consulate abroad. *See* 8 CFR 212.7(e).

Generally, individuals who are in the United States and seeking lawful permanent resident (LPR) status must either obtain an immigrant visa abroad through what is known as "consular processing" with the Department of State (DOS) or apply to adjust their immigration status to that of an LPR in the United States, if eligible. Individuals present in the United States without having been inspected and admitted or paroled are typically ineligible to adjust their status in the United States. To obtain LPR status, such individuals must leave the United States for immigrant visa processing at a U.S. Embassy or consulate abroad. But because these individuals are present in the United States without having been inspected and admitted or paroled, their departures may trigger a ground of inadmissibility based on the accrual of unlawful presence in the United States under INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i).

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[1] Immediate relatives of U.S. citizens are the spouses, children and parents of U.S. citizens, provided that, in the case of parents, the U.S. citizen son or daughter petitioner is over the age of 21. In certain situations, the former spouse of a deceased U.S. citizen is also considered an immediate relative.

Under subclause (I) of this provision, an individual who has been unlawfully present in the United States for more than 180 days but less than one year, and who then departs voluntarily from the United States before the commencement of removal proceedings, is inadmissible for 3 years from the date of departure. *See* INA section 212(a)(9)(B)(i)(I), 8 U.S.C. 1182(a)(9)(B)(i)(I). Under subclause (II), an individual who has been unlawfully present in the United States for one year or more and then departs the United States (before, during, or after removal proceedings), is inadmissible for 10 years from the date of the departure. *See* INA section 212(a)(9)(B)(i)(II), 8 U.S.C. 1182(a)(9)(B)(i)(II). These "3- and 10-year unlawful presence bars" do not take effect unless and until the individual departs from the United States. *See, e.g., Matter of Rodarte-Roman*, 23 I. & N. Dec. 905 (BIA 2006).

The Secretary of Homeland Security (Secretary) may waive this ground of inadmissibility for an individual who can demonstrate that the refusal of his or her admission to the United States would result in extreme hardship to his or her U.S. citizen or LPR spouse or parent. *See* INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v). Prior to the creation of the provisional waiver process in 2013, any individual who was seeking an immigrant visa and became inadmissible under the 3- or 10-year unlawful presence bar upon departure from the United States, could apply for a waiver of such inadmissibility from DHS by filing an Application for Waiver of Grounds of Inadmissibility, Form I–601, with USCIS, but only after having attended the consular immigrant visa interview abroad. Those who applied for waivers under this "Form I–601 waiver process"[2] were effectively required to remain abroad for at least several months while USCIS adjudicated their waiver applications.[3]

For some individuals, the Form I–601 waiver process led to lengthy separations of immigrant visa applicants from their family members, causing some U.S. citizens and LPRs to experience the significant emotional and financial hardships that Congress aimed to avoid when it authorized the waiver. *See* INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v) (providing for an inadmissibility waiver, "if it is established to the satisfaction of the Attorney General that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien"). For this reason, many relatives of U.S. citizens and LPRs who are eligible to obtain LPR status may be reluctant to travel abroad to seek immigrant visas and obtain such status. The Form I–601 waiver process also created processing inefficiencies for both USCIS and DOS through repeated interagency communication and through multiple consular appointments or interviews.

On January 3, 2013, DHS promulgated a final rule, *Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives*, in the **Federal Register**. *See* 78 FR 536 (Jan. 3, 2013) ("2013 Rule"). To improve administrative efficiency and reduce the amount of time that a U.S. citizen spouse or parent is separated from his or her relative while the relative completes the immigrant visa process, the 2013 Rule provided a process by which certain statutorily eligible individuals—specifically, certain parents, spouses and children of U.S. citizens—may apply for provisional waivers of the 3- and 10-year unlawful presence bars ("provisional waivers") before leaving the United States for their immigrant visa interviews. The final rule also limited eligibility for provisional waivers to those immediate relatives of U.S. citizens who could show extreme hardship to a U.S. citizen spouse or parent. One reason DHS limited eligibility for the provisional waiver was to allow DHS and DOS time to assess the effectiveness of the process and the operational impact it may have on existing agency processes and resources. *See* 2013 Rule, 78 FR at 541.

Administration of the provisional waiver process has shown that granting a provisional waiver prior to the departure of an immediate relative of a U.S. citizen can reduce the time that such family members are separated. The grant of a provisional waiver also reduces hardships to U.S. citizen families and lowers the processing costs for DHS and DOS. In light of these benefits, and because other individuals are statutorily eligible for waivers of the 3- and 10-year unlawful presence bars, DHS decided to remove restrictions that prevented certain individuals from seeking such waivers through the provisional waiver process. On July 22, 2015, DHS proposed to expand the class of individuals who may be eligible for provisional waivers beyond certain immediate relatives of U.S. citizens to all statutorily eligible individuals regardless of their immigrant visa classification. DHS also proposed to expand the class of individuals who could obtain provisional waivers, consistent with the statutory waiver authority, by permitting consideration of extreme hardship not only to U.S. citizen spouses or parents, but also to LPR spouses or parents.

In this final rule, DHS adopts the changes discussed in the proposed rule with several modifications in response to comments submitted on the proposed rule. The new modifications include:

(1) Clarifying that all individuals seeking provisional waivers, including those in removal proceedings before the Executive Office for Immigration Review (EOIR), must file applications for provisional waivers with USCIS.

(2) Allowing individuals to apply for provisional waivers even if USCIS has a reason to believe that they may be subject to other grounds of inadmissibility.

(3) Eliminating the proposed temporal limitations that would have restricted eligibility for provisional waivers based on DOS visa interview scheduling.

(4) Allowing individuals with final orders of removal, exclusion, or deportation to be eligible for provisional waivers provided that they have already applied for, and USCIS has approved, an Application for Permission to Reapply for Admission into the United States After Deportation or Removal, Form I–212.

(5) Clarifying that DHS must have actually reinstated a removal, deportation, or exclusion order in order for an individual who has returned to the United States unlawfully after removal to be ineligible for a provisional waiver on that basis.

In addition, DHS made several technical and non-substantive changes.

B. Costs and Benefits

This rule's expansion of the provisional waiver process will create costs and benefits for newly eligible provisional waiver (Form I–601A) applicants, their U.S. citizen or LPR family members, and the Federal Government (namely, USCIS and DOS), as outlined in the Summary Table. This rule will impose fee, time, and travel costs on an estimated 100,000 newly eligible individuals who choose to complete and submit provisional waiver applications and biometrics (fingerprints, photograph, and signature) to USCIS for consideration during the 10-year period of analysis (*see* Table 8). These costs will equal an estimated $52.4 million at a 7 percent discount rate and $64.2 million at a 3 percent discount rate in present value across the period of analysis. On an annualized basis, the costs will measure approximately $7.5 million at both 7 percent and 3 percent discount rates (*see* Summary Table).

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[2] The "Form I–601 waiver process," for purposes of this rule, refers to the process that an applicant uses when seeking an immigrant visa at a U.S. Embassy or consulate abroad and applying for a waiver of inadmissibility by filing an Application for Waiver of Grounds of Inadmissibility, Form I–601.

[3] The average adjudication time of Form I–601 applications is currently over five months. Source: U.S. Citizenship and Immigration Services. USCIS Processing Time Information for the Nebraska Service Center-Form I–601, *available at https://egov.uscis.gov/cris/processTimesDisplayInit.do* (last updated Feb. 11, 2016).

Newly eligible provisional waiver applicants and their U.S. citizen or LPR family members will benefit from this rule. Those applying for provisional waivers will receive advance notice of USCIS' decision to provisionally waive their 3- or 10-year unlawful presence bar before they leave the United States for their immigrant visa interview abroad. This offers applicants and their family members the certainty of knowing that the applicants have been provisionally approved for waivers of the 3- and 10-year unlawful presence bars before departing from the United States. Individuals with approved provisional waivers may experience shortened periods of separation from their family members living in the United States while they pursue issuance of immigrant visas abroad, thus reducing any related financial and emotional strains on the families. USCIS and DOS will continue to benefit from the operational efficiencies gained from the provisional waiver's role in streamlining immigrant visa application processing, but on a larger scale.

In the absence of this rule, DHS assumes that the majority of individuals who are newly eligible for provisional waivers under this rule will likely continue to pursue an immigrant visa through consular processing abroad and apply for waivers of grounds of inadmissibility resulting from the accrual of unlawful presence through the Form I–601 waiver process. Those who apply for unlawful presence waivers through the Form I–601 waiver process will incur fee, time, and travel costs similar to individuals applying for waivers through the provisional waiver process. However, without this rule, individuals who must seek a waiver of inadmissibility abroad through the Form I–601 waiver process after the immigrant visa interview may face longer separation times from their families in the United States and will experience less certainty regarding the approval of a waiver of the 3- or 10-year unlawful presence bar before departing from the United States. Absent a waiver, individuals who are subject to these bars would be unable to obtain LPR status for either 3 or 10 years.

SUMMARY TABLE—TOTAL COSTS AND BENEFITS OF RULE, YEAR 1–YEAR 10

	10-Year present values		Annualized values	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Total Costs: Quantitative	$64,168,205	$52,429,216	$7,522,471	$7,464,741
Total Benefits: Qualitative	Decreased amount of time that U.S. citizens or LPRs are separated from their family members with approved provisional waivers, leading to reduced financial and emotional hardship for these families.		Decreased amount of time that U.S. citizens or LPRs are separated from their family members with approved provisional waivers, leading to reduced financial and emotional hardship for these families.	
	Provisional waiver applicants will receive advance notice of USCIS' decision to provisionally waive their 3- or 10-year unlawful presence bar before they leave the United States for their immigrant visa interview abroad. This offers applicants and their family members the certainty of knowing that the applicants have been provisionally approved for a waiver before departing from the United States.		Provisional waiver applicants will receive advance notice of USCIS' decision to provisionally waive their 3- or 10-year unlawful presence bar before they leave the United States for their immigrant visa interview abroad. This offers applicants and their family members the certainty of knowing that the applicants have been provisionally approved for a waiver before departing from the United States.	
	Federal Government will achieve increased efficiencies by streamlining immigrant visa processing for applicants seeking inadmissibility waivers of unlawful presence.		Federal Government will achieve increased efficiencies by streamlining immigrant visa processing for applicants seeking inadmissibility waivers of unlawful presence.	

Note: The cost estimates in this table are contingent upon Form I–601A filing projections as well as the discount rates applied for monetized values.

II. Background

A. Legal Authority

Under section 212(a)(9)(B) of the INA, 8 U.S.C. 1182(a)(9)(B), an individual who has accrued more than 180 days of unlawful presence in the United States and then leaves the United States generally is inadmissible for a specified period after the individual's departure. The inadmissibility period lasts for 3 years if the individual accrued more than 180 days but less than 1 year of unlawful presence, and for 10 years if the individual accrued 1 year or more of unlawful presence. Under INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v), the Secretary of Homeland Security ("Secretary") has discretion to waive this ground of inadmissibility if the Secretary finds that denying the applicant's admission to the United States would result in extreme hardship to the applicant's U.S. citizen or LPR spouse or parent. INA section 103, 8 U.S.C. 1103, gives the Secretary the authority to prescribe regulations for the administration and enforcement of the immigration and naturalization laws of the United States.

B. Proposed Rule

On July 22, 2015, DHS published a notice of proposed rulemaking to expand eligibility for provisional waivers of certain grounds of inadmissibility based on the accrual of unlawful presence to all individuals who are statutorily eligible for a waiver of such grounds, are seeking a provisional waiver in connection with an immigrant visa application, and meet other conditions. *See* proposed rule, *Expansion of Provisional Waivers of Inadmissibility*, 80 FR 43338 (July 22, 2015) (2015 Proposed Rule).

In response to the proposed rule, DHS received 606 public comments from individuals, advocacy groups, attorneys, organizations, schools, and local governments. Some of the comments were submitted through mass mailing or email campaigns or petitions expressing support for or opposition to the provisional waiver process in general. Opinions on the proposed rule varied, but the majority of commenters (472) were supportive of the proposed expansion. Many of these commenters made additional suggestions to improve the provisional waiver process overall. These suggestions are discussed below.

DHS received 82 comments opposed to the proposed rule. In many of these instances, these commenters argued that the Executive Branch lacks the legal authority to implement the proposed changes. Commenters indicated that expanding the program amounted to an abuse of authority. One commenter asserted that the rule exceeded the Secretary's authority under the INA and that provisionally approving a waiver before an individual departs from the United States based on a family unity rationale was arbitrary and capricious. Some commenters also believed that the provisional waiver process would grant legal status to individuals unlawfully present in the United States. Others asked that USCIS prioritize the lawful immigrant community over those unlawfully present in the United States.

DHS received 52 comments that either did not clearly express an opinion in support of or in opposition to the proposed rule or that did not address any aspect of the proposed rule. For example, a few commenters provided input on immigrants in general, immigration policy, the Federal government, and other government programs that are not within the scope of this rulemaking. Because these comments address nothing in the proposed rule, DHS provides no specific response to them.

Unless mentioned in this supplementary information, commenters did not make any specific suggestions for changes to the provisional waiver process based on what DHS outlined in the proposed rule. In preparing this final rule, DHS counted and considered each public comment and other relevant materials that appear in the Federal Docket Management System (FDMS). All comments received may be reviewed in FDMS at *http://www.regulations.gov*, under docket number USCIS–2012–0003.

C. Final Rule

This final rule adopts most of the regulatory amendments set forth in the proposed rule except for a few provisions, as explained in this preamble. The rationale for the proposed rule and the reasoning provided in its preamble remain valid with respect to the regulatory amendments adopted. Additionally, DHS has made several changes to the regulatory provisions based on the comments received. This final rule also adopts the technical regulatory amendments suggested in the proposed rule without change. This final rule does not address comments seeking changes in U.S. laws, regulations, or agency policies that are unrelated to the provisional waiver process or the clarifying technical amendments to 8 CFR 212.7. This final rule does not change the procedures or policies of other DHS components or Federal agencies, or resolve issues outside the scope of this rulemaking.

III. Public Comments on the Proposed Rule

A. Summary of Public Comments

The 60-day public comment period for the proposed rule ended on September 21, 2015. The majority of comments came from supporters who agreed that the proposed rule would promote family unity and reduce the length of time family members would be separated. Many considered family unity as one of the core principles of U.S. immigration law and stated that this rulemaking benefitted the United States overall, not just families. Several commenters made suggestions for simplifying the provisional waiver process overall.

Some commenters identified themselves as U.S. citizens or LPR family members (including children) who were worried about their relatives' immigration situations and about being separated from their family members for prolonged time periods. Numerous commenters who urged DHS to implement the proposed expansion shared personal stories and described hardships they have experienced or may experience upon being separated from family members. Many reasoned that keeping families together assists the U.S. economy and otherwise strengthens the country, because many individuals who are undocumented work hard, pay taxes, and are concerned about the well-being of their children. Many asserted that the 3- and 10-year unlawful presence bars and other bars to admissibility are inhumane and cruel and that these laws need to change. Backlogs in the immigration system, such as visa backlogs, were raised generally by commenters as additional reasons for supporting this rule. Some commenters also believed that expanding eligibility for the provisional waiver process would streamline the waiver adjudication process for applicants inadmissible based on the accrual of unlawful presence in the United States, thereby making the immigrant visa process faster and more predictable. Finally, a commenter expressed the belief that expanding the process would reduce burdens on DOS.

Several commenters who disagreed with the proposed expansion argued that the Executive Branch lacks the legal authority to implement the proposed changes without congressional approval. Others stated that the proposed expansion is the Administration's way of circumventing existing laws, creating amnesty, and favoring those who are unlawfully present over lawful immigrants. Some considered the measure to be unconstitutional, arbitrary, and capricious. A number of commenters asserted that the expansion would reward law breakers, further illegal immigration, and lead to system abuse and fraud, as well as additional social problems.

For several commenters, unifying families was not an acceptable justification for the proposed rule. Some asserted that it is not the U.S. Government's place to accommodate people who are in the country illegally. Those commenters expressed that family separation is a natural consequence of an individual's choice to break the law. Others asserted that expanding the process would undermine the Nation's sovereignty, economy, security, and proper law enforcement efforts. Overall, these commenters believed that the expansion would erode the integrity of the immigration system.

Many of the commenters identified themselves as lawful immigrants or relatives of lawful immigrants. Some of these individuals voiced disappointment over the proposed expansion and indicated that the Federal Government's money and resources would be better invested in assisting U.S. citizens and lawful immigrants. These commenters emphasized that they have complied with the law, paid taxes, and worked hard toward maintaining lawful status, and they asked DHS to first assist individuals who are lawfully present in the United States to obtain immigrant status by fixing the backlogged immigration system before fixing processes that benefit those who are unlawfully present in the United States.

One commenter suggested that local governments, rather than the Federal Government, should control the immigration process. This commenter indicated that local governments are in a better position to consider the costs of immigration measures to local communities. Other commenters considered the rule unnecessary and current regulations sufficient to address the immigrant community's needs. One commenter asked that DHS restrict and not expand the provisional waiver process in order to better control the U.S. border.

DHS has reviewed all of the public comments received in response to the proposed rule and addresses those comments focused on aspects in this final rule. DHS's responses to these comments are grouped by subject area, with a focus on the most common issues and suggestions raised by the commenters. The response to each comment also explains whether DHS made any changes to address the comment. DHS received no comments on the following topics addressed in the proposed rule: Inclusion of Diversity Visa selectees; inclusion of derivative spouses and children; the rejection criteria; the validity of an approved provisional waiver; and automatic revocation.

B. Legal Authority

A number of commenters questioned the Department's legal authority to expand the provisional waiver process. Some commenters expressed the view that the rule constituted an attempt to circumvent Congress, and that it was as an effort in disregard of current immigration laws, including case law. Some commenters also stated that the proposed rule exceeded DHS authorities in implementing the Secretary's directive to expand eligibility for provisional waivers. Others asserted that the rule was arbitrary and capricious.

DHS disagrees that this rule's expansion of the provisional waiver process exceeds the Secretary's legal authority. As a preliminary matter, the Federal Government has plenary authority over immigration and naturalization, and Congress may enact legislation establishing immigration law and policy. *See, e.g., Arizona* v. *United States,* 132 S. Ct. 2492, 2498 (2012) ("The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens. This authority rests, in part, on the National Government's constitutional power to 'establish [a] uniform Rule of Naturalization,' and its inherent power as sovereign to control and conduct relations with foreign nations." (citations omitted)); *see also Fiallo* v. *Bell,* 430 U.S. 787, 792 (1977). The Executive Branch, which includes DHS, implements the laws passed by Congress, and Congress has specifically charged the Secretary with the administration and enforcement of the immigration and naturalization laws. *See* 6 U.S.C. 112, 202(3)–(5); INA section 103, 8 U.S.C. 1103(a). The Secretary is also authorized to promulgate rules and "perform such other acts as he deems necessary for carrying out his authority." INA section 103(a)(3), 8 U.S.C. 1103(a)(3). The Secretary thus has broad discretion to determine the most effective way to administer the immigration laws. *See, e.g., Jean* v. *Nelson,* 727 F.2d 957, 965 (11th Cir. 1984) ("The principal responsibility for immigration matters in the Executive branch resides with the [Secretary], who is the beneficiary of broad grants of discretion under the statute."), *aff'd,* 472 U.S. 846 (1985); *Narenji* v. *Civiletti,* 617 F.2d 745, 747 (D.C. Cir. 1979) (observing that the INA "need not specifically authorize each and every action taken by the Attorney General [(now Secretary of Homeland Security)], so long as his action is reasonably related to the duties imposed upon him").

More specifically, Congress provided for a waiver of the 3- and 10-year unlawful presence bars in INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v), for individuals who can demonstrate extreme hardship to certain qualifying relatives. That section does not restrict the manner in which eligible individuals can seek such waivers. In 2013, DHS created the provisional waiver process to allow certain immigrant visa applicants who are immediate relatives of U.S. citizens to provisionally apply for waivers before they leave the United States for their consular interviews. The creation of this process was merely a procedural change that addressed the manner in which eligible individuals can apply for the statutorily provided waiver of inadmissibility. *See Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives,* 78 FR 536, 541 (Jan. 3, 2013) ("2013 Rule"). This rule expands on that process by simply expanding the pool of individuals eligible to apply for provisional waivers to statutorily eligible individuals in all immigrant visa classifications, subject to certain conditions. *See* new 8 CFR 212.7(e). Like the 2013 Rule, this Final Rule, therefore, does not create new waiver authority; it implements an existing authority conferred by Congress.[4]

Finally, DHS disagrees with commenters who stated that the proposed rule is arbitrary and capricious. The commenters appear to assert that DHS exceeds its statutory authority by violating the substantive requirements of the Administrative Procedure Act (APA). *See* 5 U.S.C. 706(2)(A). A rulemaking may be considered arbitrary and capricious under the APA when an agency's action is unreasonable, unsound, or not explained, or when it fails to demonstrate that the agency has considered the circumstances surrounding its action. An agency must examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made. *See Motor Vehicle Mfrs. Ass'n of the United States, Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42–43 (1983). DHS has made clear throughout the proposed rule and this preamble all of the factors that were considered in putting forth the proposal and has articulated how the expansion of the provisional waiver process is tied to the purposes of the immigration laws and efficient operation of the immigration system. *See generally* 2015 Proposed Rule, 80 FR 43339. DHS believes that the assertions of these commenters are unfounded.

C. Eligibility for the Provisional Waiver

1. Categories of Eligible Individuals

Many commenters believed that expanding eligibility for the provisional waiver as proposed to all statutorily eligible individuals—including beneficiaries in family-sponsored and employment-based preference categories, as well as Diversity Visa selectees—would offer benefits to the U.S. Government and facilitate legal immigration and family unity. These commenters indicated that the expansion would reduce the fear of many immigrants, who otherwise may worry that they would be unable to reunite with their families after leaving the United States to have their immigrant visas processed abroad.

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[4] Neither conditioning a waiver on an individual's departure from the United States nor allowing advance application for a waiver is novel. For example, DHS regulations at 8 CFR 212.2(j) have long allowed an individual who is subject to a removal order to seek consent to reapply for admission under INA section 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii), while the individual is in the United States and before the individual departs the United States. A grant of consent to reapply for admission, like the provisional waiver, is conditioned on the individual's eventual departure from the United States. *See* 8 CFR 212.2(j). DHS and former Immigration and Naturalization Service (INS) regulations have permitted advance applications for consent to reapply for admission under INA section 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii) since at least 1969. *See, e.g.,* 34 FR 9061 (1969); 36 FR 11635 (1971). The INS also permitted advance waiver applications under former INA section 212(c), 8 U.S.C. 1182(c) (repealed 1996). *See* 8 CFR 212.3(b); 52 FR 11620 (1987).

Accordingly, some commenters suggested that all individuals with approved immigrant visa petitions should be able to participate in the provisional waiver process, regardless of whether they are located inside or outside the United States. Other commenters asked that USCIS allow individuals with approved immigrant visa petitions to apply for provisional waivers regardless of their priority dates, especially if they had been present in the United States for many years.

Many commenters asked that DHS allow the following categories of individuals to apply for provisional waivers: (1) Married or unmarried individuals over the age of 21 with U.S. citizen parents; (2) individuals over the age of 21, whether single or married; (3) spouses of U.S. citizens without a criminal record and with good standing in their communities; (4) parents of U.S. citizens with approved petitions; (5) sons-in-law and daughters-in-law; and 6) self-petitioning widows and widowers of U.S. citizens. Some commenters urged DHS to prioritize relatives of U.S. citizens over relatives of LPRs. Some commenters asked that DHS focus not only on families, but also on sponsored employees, corporations, and self-sponsored business owners. Others requested that DHS include the following categories of individuals in the provisional waiver process: (1) Those with nonimmigrant investor-type visas; (2) well-educated professionals; (3) those with approved immigrant visa petitions but without any family in the United States; (4) spouses of nonimmigrant visa holders who are beneficiaries of approved employment-based immigrant visa petitions (Forms I–140); and (5) those with pending immigrant visa petitions. Many commenters requested that USCIS adjust an individual's status to that of an LPR upon approval of the waiver; others mistakenly believed that USCIS already does so.

The Secretary is authorized to waive the 3- and 10-year unlawful presence bars for individuals seeking admission to the United States as immigrants if they can show that the refusal of admission would result in extreme hardship to a qualifying U.S. citizen or LPR spouse or parent, and provided that the applicant warrants a favorable exercise of discretion. *See* INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v). With this final rule, DHS is allowing all individuals who are statutorily eligible for an immigrant visa and who meet the legal requirements for a waiver under INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v), to seek a provisional waiver in accordance with new 8 CFR 212.7(e). Consistent with the current provisional waiver process, provisional waivers are available only to those who are present in the United States, who must apply for immigrant visas at U.S. embassies or consulates abroad, and who at the time of the immigrant visa interview may be inadmissible based on the accrual of unlawful presence under INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i).

DHS can only expand the pool of individuals eligible for this process to those who fall within one of the current statutory immigrant visa classifications and who meet the requirements for the unlawful presence waiver described in INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v). DHS cannot expand eligibility to those who are not statutorily eligible for such waivers under current law. Similarly, DHS cannot change who is statutorily eligible to adjust status in the United States. Intending immigrants who are present in the United States but ineligible to adjust status must depart the United States and obtain their immigrant visas through consular processing abroad; approval of a provisional waiver does not change this requirement. *See* INA sections 104, 202(a)(1)(B), 211, 221, 222 and 245; 8 U.S.C. 1104, 1152(a)(1)(B), 1181, 1201, 1202, and 1255. *See generally* 8 CFR part 245; 22 CFR part 42.

As indicated above, many commenters asked that DHS expand the provisional waiver process to include additional categories of individuals, including sons or daughters who have approved immigrant visa petitions and are over the age of 21 or married. To clarify, in the proposed rule, DHS sought to include *all* beneficiaries of approved immigrant visa petitions who are statutorily eligible for a waiver of the 3- and 10-year unlawful presence bars, regardless of age, marital status, or immigration status. Individuals with approved immigrant visa petitions, including sons and daughters (married or unmarried) of U.S. citizens, as well as those who have been selected to participate in the Diversity Visa program, may participate in the provisional waiver process provided they meet the requirements stated in 8 CFR 212.7(e). Consistent with its statutory authority under INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v), DHS will no longer limit the provisional waiver process to certain immediate relatives of U.S. citizens.[5]

2. Backlogged Immigrant Visa Categories and Eligibility for Interim Benefits

A large number of commenters suggested that individuals with approved family-sponsored and employment-based immigrant visa petitions should be permitted to obtain provisional waivers if immigrant visas are unavailable to them as a result of visa backlogs.[6] Many commenters expressed frustration with the current legal immigration system and lengthy wait times for visas, which separate families and hinder the professional development of many individuals and their family members. Some commenters said it was unfair that DHS and USCIS seek to implement rules that assist persons who came to the United States unlawfully. These commenters indicated that those who came legally to the United States but who cannot obtain immigrant status as a result of visa backlogs should also receive assistance. These commenters opined that those who immigrate lawfully, such as employment-based immigrants, bring economic advantages to the United States.

A few commenters suggested that individuals with or without approved provisional waivers should be given interim benefits while awaiting visa availability. For example, one commenter requested that USCIS grant deferred action and work authorization to undocumented individuals who are U.S.-educated professionals in nursing, medical, or engineering fields, are the beneficiaries of family-sponsored petitions, and have displayed good conduct. Another commenter requested that an individual with an approved provisional waiver be issued a temporary Social Security number and renewable work authorization for a minimum of 3 years. A commenter asked USCIS to provide work authorization and advance parole documents to enable travel outside of, and facilitate return to, the United States to lawfully present individuals affected by visa backlogs if they otherwise complied with the immigration laws. Another commenter believed that USCIS should grant parole in place to an individual with an approved immigrant visa petition and provisional waiver, if the petitioner's or beneficiary's disability makes travel abroad hazardous due to a condition covered by the Americans with Disabilities Act (ADA).[7] After receiving parole in place, the commenter reasoned, the beneficiary could adjust his or her status in the United States and would not have to risk the petitioner's or the beneficiary's life by traveling. Finally, many commenters expressed the desire that individuals be able to adjust status in the United States if they have an approved petition or provisional waiver.

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[5] Additionally, as explained throughout this preamble, DHS is changing other eligibility and ineligibility criteria in response to comments received.

[6] In particular, some commenters requested that DHS include married and unmarried sons and daughters of U.S. citizens for whom an immigrant visa is unavailable due to immigrant visa backlogs.

DHS acknowledges the concerns many intending immigrants face due to backlogs in available immigrant visa numbers. As noted, DHS is broadening the availability of the provisional waiver process to include all statutorily eligible individuals—including all beneficiaries of family-sponsored and employment-based immigrant visa petitions, as well as Diversity Visa selectees—who have a qualifying relative under the statute for purposes of the extreme hardship determination. Beneficiaries in family-sponsored and employment-based preference categories, as well as Diversity Visa immigrants, are subject to annual numerical limits that have been set by Congress. *See* INA sections 201, 202 and 203; 8 U.S.C. 1151, 1152 and 1153. Neither DOS nor DHS can change the number of visas that Congress allocates for particular immigrant visa categories, nor can they alter the statutory requirements for adjustment of status in the United States. Addressing those recommendations would require legislative changes.

DHS does not consider it appropriate to make an application for a provisional waiver, or the approval of such an application, a basis for granting interim benefits, including an advance parole document or employment authorization. In particular, because an approved immigrant visa petition and a waiver of inadmissibility do not independently confer any immigration status or otherwise afford lawful presence in the United States, neither may typically serve as the basis for interim benefits. Furthermore, issuance of interim benefits to individuals who are granted provisional waivers may encourage them to postpone their timely departures from the United States to pursue their immigrant visa applications. The purpose of the provisional waiver process is not to prolong an applicant's unlawful presence in the United States. Rather, the purpose is to facilitate the applicant's departure to attend an immigrant visa interview abroad so that they may complete their application process for an immigrant visa. Moreover, providing an advance parole document is unnecessary because the premise of the provisional waiver process is that the applicant, if eligible, will depart the United States and return with an immigrant visa.

The provisional waiver process is designed to encourage unlawfully present individuals to leave the United States, attend their immigrant visa interviews, and return to the United States legally to reunite with their U.S. citizen or LPR family members. Having an approved provisional waiver helps facilitate immigrant visa issuance at DOS, streamlines both the waiver and the immigrant visa processes, and reduces the time that applicants are separated from their U.S. citizen or LPR family members, thus promoting family unity.

3. Individuals Outside the United States

A few commenters asked DHS to extend eligibility for provisional waivers to individuals outside the United States. Commenters argued that such individuals should be eligible for provisional waivers because they are often relatives of U.S. citizens with approved immigrant visa petitions and have immigrant visa applications pending with DOS. These commenters also suggested that those who need waivers of the 3- and 10-year unlawful presence bars but are now outside the United States should not be disadvantaged by their decision to ultimately comply with the immigration laws by departing the United States. The commenters believed that DHS should apply the same rules and processes to all visa applicants.

DHS understands the difficulties that U.S. citizens and LPRs face when their family members are outside the United States and are attempting to navigate the immigrant visa process. DHS notes, however, that individuals who are outside the United States and are eligible for waivers of the 3- and 10-year unlawful presence bars may apply for such waivers through the preexisting Form I–601 waiver process. Considering the existence of the Form I–601 waiver process, DHS continues to believe that expanding the provisional waiver process to those individuals abroad would duplicate steps already incorporated in the DOS immigrant visa process and would not be an efficient use of agency resources. DHS thus will not adopt the suggestion.[8]

However, to alleviate some of the delays in waiver processing for those filing from abroad, USCIS has implemented the centralization of Form I–601 application filings, which no longer requires that applicants schedule "waiver filing" appointments with a U.S. embassy or consulate. Instead, Form I–601 applicants now file the waiver application directly with USCIS at a centralized location in the United States, thereby significantly reducing the time they are required to be outside the United States. By centralizing the processing of these waiver applications at locations in the United States, USCIS is able to better ensure that applications are processed in the most efficient manner possible.

4. Extreme Hardship

Several commenters requested that USCIS clarify the term "extreme hardship" in guidance or regulations. Others suggested that the proposed rule was legally flawed because DHS had not promulgated the requirements for establishing extreme hardship. Commenters requested that DHS clearly define the term and apply it fairly, including by considering the financial, emotional, and other harmful effects that result from separating families. Commenters believed that clarifying the term would lead to greater consistency in adjudication. One commenter asked that extreme hardship examples be included in guidance and in the provisional waiver application form.

Many commenters also requested that USCIS ease the extreme hardship standard and its documentary requirements, including, for example, by presuming extreme hardship in certain cases involving vulnerable families. Commenters often referenced the interim rule at 8 CFR 240.64(d)[9] as a precedent that DHS could consider for purposes of adopting one or more presumptions of extreme hardship. Commenters also urged USCIS to extend the special accommodation for beneficiaries of immigrant visa petitions described in INA section 204(l), 8 U.S.C. 1154(l), to self-petitioning widows and widowers of U.S. citizens when such citizens died before filing immigrant visa petitions on behalf of their spouses. INA section 204(l), 8 U.S.C. 1154(l), allows for immigrant visa petitions and related applications to be approved or reinstated for certain beneficiaries despite the death of the petitioner or principal beneficiary. Under the special accommodation, the death of the petitioner or principal beneficiary is treated as the "functional equivalent" of a finding of extreme hardship in cases where he or she could have served as a "qualifying relative" for purposes of waiving the 3- and 10-year unlawful presence bars.[10]

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[7] *See* Americans with Disabilities Act of 1990 (Pub. L. 101–336), as amended.

[8] For additional discussion relating to this suggestion, please refer to the 2013 Rule, 78 FR at 543.

[9] This regulation was promulgated under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105–100 (Nov. 19, 1997).

Other commenters believed that if an applicant demonstrates some or all of the factors listed in the Secretary's November 20, 2014 memorandum directing expansion of the provisional waiver program[11]—such as those relating to the age of the affected U.S. citizen or LPR spouse or parent, length of U.S. residence, and family ties in the United States—USCIS should apply a rebuttable presumption and find that the applicant has established extreme hardship. Having a presumption, some believed, would ease the burden of proof for many families. Some commenters also indicated that it was often very difficult for families to produce documentation to demonstrate extreme hardship, which the commenters viewed as an unnecessary barrier.

A considerable number of commenters suggested alternative standards of extreme hardship or asked that DHS include additional individuals as qualifying relatives for purposes of the extreme hardship determination. For example, commenters believed that USCIS should find extreme hardship if: (1) The applicant has a U.S. citizen spouse or parent; (2) a family is separated, or a child is separated from his or her parents; (3) family members lose their jobs because they have to travel to other countries; (4) the applicant's child would experience extreme hardship; (5) the applicant's sibling would experience extreme hardship; (6) the applicant would trigger the 3- or 10-year unlawful presence bar when departing the United States; (7) the applicant has waited for a prolonged period for an immigrant visa to become available; (8) the applicant is the beneficiary of an employment-based immigrant visa petition (because beneficiaries of such petitions may not have U.S. citizen or LPR qualifying relatives);[12] or (9) the applicant has family in the United States but not a qualifying relative. Many commenters also requested that DHS give consideration to extreme hardship that would be suffered by U.S. citizen or LPR sons and daughters who are over the age of 21 or who are married.[13] One commenter requested that special consideration be given to those in "special situation[s]" with respect to extreme hardship determinations, even if they do not have qualifying relatives. That commenter appeared to suggest that USCIS should create two classifications for assessing waiver eligibility, one for individuals with LPR family members and one for individuals without LPR family members. A few commenters asked DHS to eliminate the extreme hardship standard altogether. Many such commenters felt that taxpaying citizens who are "good people" should be able to keep their families together and that it is unfair to separate families simply because certain individuals cannot establish extreme hardship.

One commenter suggested that USCIS should contact experts and declarants claiming personal knowledge of a qualifying relative's hardship claim by mail in order to verify that such claims are legitimate. This commenter also suggested that DHS should only consider hardship flowing from a qualifying relative's decision to remain in the United States and not the hardship such a relative may confront if he or she chooses to depart with the inadmissible applicant. That commenter viewed as "hypothetical" the hardship that may result if the qualifying relative chooses to depart, but as "verifi[able]" the hardship resulting from the choice of a qualifying relative to stay behind in the United States. According to the commenter, considering hypothetical hardship in another country is unnecessary and too difficult to document.

Other commenters proposed that DHS provide in its regulations a list of consequences or other factors typically associated with removal that adjudicators would consider when making extreme hardship recommendations. These commenters suggested that such a list of factors be drawn from historical data and precedent decisions. The commenters further suggested that such a list would be analogous to what is provided in the regulation for NACARA[14] applicants at 8 CFR 1240.58(b). The commenters considered such an approach invaluable to achieving consistent adjudication of all waiver applications under the INA, not just provisional waiver applications. The commenters also believed that such an approach would reduce the incentive for individuals to make conclusory and unsupported allegations when applying for provisional waivers. According to these commenters, the lack of such a regulation was a "capricious political benefit" to those unlawfully present in the United States.

Finally, another commenter requested that USCIS establish specific questions related to hardship so that USCIS officers can quickly determine whether a threshold level of extreme hardship has been demonstrated.[15] As an alternative to an extreme hardship showing, another commenter suggested that USCIS permit applicants to explain why they violated U.S. immigration laws. Another commenter indicated that it was important to train officers in this area.

DHS cannot adopt suggestions to revise the statutory requirements for waivers of the unlawful presence grounds of inadmissibility under INA section 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B). The authorizing statute requires the applicant to show extreme hardship to a U.S. citizen or LPR spouse or parent, and DHS does not have the authority to change the statutory requirement. DHS also cannot approve a provisional waiver application if the applicant has not demonstrated extreme hardship to a qualifying relative as required by the INA.

DHS also declines in this rulemaking to define extreme hardship for purposes of the provisional waiver (or more generally), or to create a rebuttable presumption related to such determinations. The INA does not define extreme hardship. The Board of Immigration Appeals (BIA) has stated that extreme hardship is not a definable term of fixed and inflexible meaning, and that establishing extreme hardship is dependent upon the facts and circumstances of each case.[16] *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999) (describing factors to be considered in extreme hardship analysis), *aff'd, Cervantes-Gonzales* v. *INS,* 244 F.3d 1001 (9th Cir. 2001). Accordingly, DHS will continue to make extreme hardship determinations for purposes of provisional waivers on a case-by-case basis, consistent with agency guidance. On October 7, 2015, USCIS posted proposed guidance on extreme hardship determinations for public comment on its Web site at *www.uscis.gov.*[17] USCIS also continually trains its officers on all aspects of the provisional waiver adjudication, including the extreme hardship determination.

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[10] *See* USCIS AFM Chapter 10.21(c)(5), *https://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/Chapter10-21.html.* This guidance does not refer to the accommodation as a "presumption," even though it has similar effect to a presumption. As with any finding of extreme hardship, the accommodation permits, but does not require, approval of the waiver, which remains a matter of USCIS discretion.

[11] *See* Memorandum from Jeh Charles Johnson, Secretary of Homeland Security to Léon Rodríguez, Director, USCIS, Expansion of the Provisional Waiver Program (Nov. 20, 2014), *available at https://www.dhs.gov/sites/default/files/publications/14_1120_memo_i601a_waiver.pdf.*

[12] Some commenters asked USCIS to accept a showing of extreme hardship to an employer, but such consideration is not authorized by the statutory waiver authority at INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v).

[13] In many instances, it was unclear whether commenters were requesting additional eligibility criteria for provisional waivers in general, or whether they were requesting that DHS consider additional classes of individuals to be qualifying relatives for purposes of the extreme hardship determination.

[14] *See* note 8, *supra.*

[15] The commenter cited the Application for Suspension of Deportation or Special Rule Cancellation of Removal, Form I–881, which contains a list of questions relating to factors considered when evaluating extreme hardship as drawn from the NACARA special rule regulations at 8 CFR 1240.58(b).

Finally, DHS cannot extend the special accommodation for beneficiaries of immigrant visa petitions described in INA section 204(l), 8 U.S.C. 1154(l), to self-petitioning widows and widowers of U.S. citizens when such citizens died prior to filing immigrant visa petitions on behalf of their spouses. Under this section, USCIS may approve, or reinstate the approval of, an immigrant visa petition despite the death of the petitioner or principal beneficiary, if at least one beneficiary was residing in the United States when the relative died and continues to reside in the United States. If USCIS approves or reinstates the approval of the immigrant visa petition, USCIS also has discretion to act favorably on "any related applications." INA section 204(l), 8 U.S.C. 1154(l). When Congress enacted INA section 204(l), 8 U.S.C. 1154(l), USCIS interpreted "any related applications" to include waiver applications that a beneficiary would have been able to file had the qualifying relative not died. But that section applies, by its express terms, only to an individual who "immediately prior to the death of his or her qualifying relative was . . . the beneficiary of a pending or approved petition." If the deceased qualifying relative had not filed an immigrant visa petition at the time of death, there is no "pending or approved" petition to which INA section 204(l), 8 U.S.C. 1154(l), can apply. Nor can there be said to be any "related applications."

5. Applicants With Other Grounds of Inadmissibility

A large number of commenters supporting this rule stated that U.S. immigration laws are overly harsh, and that these laws harm families of U.S. citizens and LPRs. In general, many commenters asked DHS to waive certain grounds of inadmissibility for which the INA does not currently provide relief for immigrants.[18] Other commenters asked DHS to consider expanding the provisional waiver process to cover additional grounds of inadmissibility for which waivers are statutorily available. These commenters specifically referenced the waiver for fraud and willful misrepresentation under INA section 212(i), 8 U.S.C. 1182(i), or alien smuggling under INA section 212(d)(11), 8 U.S.C. 1182(d)(11). Some commenters recommended that when an applicant is granted a provisional waiver based on a finding of extreme hardship, the Department should conclude that the applicant has established extreme hardship for other types of waiver applications that apply the same standard. One commenter suggested that the standard for the waiver to overcome inadmissibility for alien smuggling is lower than the extreme hardship standard[19] and that USCIS should thus consider the lower standard as encompassed by the extreme hardship standard. The commenter thus believed that the waiver to overcome the alien smuggling inadmissibility ground could easily be incorporated into the provisional waiver process. Overall, commenters suggested that DHS allow individuals to apply for all available waivers of inadmissibility through the provisional waiver process, which the commenters believed would further streamline the waiver and immigrant visa processes.[20]

Several commenters requested that the provisional waiver process be available to individuals who are barred for unlawful reentry after previous immigration violations under INA section 212(a)(9)(C), 8 U.S.C. 1182(a)(9)(C). Others suggested making the process available to individuals who are inadmissible under that section if they are spouses of U.S. citizens or LPRs. A few commenters asked that certain categories of individuals receive special treatment.[21] For example, a commenter requested that DHS create a special waiver for Deferred Action for Childhood Arrivals (DACA) recipients. Others asked that DHS add special provisions to benefit the relatives of active members or veterans of the U.S. Armed Forces.

DHS considered these comments but did not adopt the suggested changes. DHS cannot waive grounds of inadmissibility for those who are not authorized to receive waivers under the immigration laws. Implementation of these suggestions thus would have exceeded DHS's statutory authority. Other suggestions did not support a principal goal of the provisional waiver process, which is to streamline immigrant visa issuance for individuals who are eligible for an immigrant visa and otherwise admissible to the United States[22] but whose family members would experience extreme hardship due to application of certain unlawful presence grounds of inadmissibility. As explained in the 2013 Rule, DOS consular officers are charged with determining whether individuals are eligible for issuance of immigrant visas, including whether they are affected by one or more grounds of inadmissibility. Expanding the provisional waiver process to other grounds of inadmissibility would introduce additional complexity and inefficiencies into the immigrant visa process, create potential backlogs, and likely delay and adversely affect the processing of immigrant visas by DOS. Furthermore, USCIS generally assesses waiver applications for inadmissibility due to fraud, misrepresentation, or criminal history through an in-person interview at a USCIS field office. Because DOS already conducts a thorough in-person interview as part of the immigrant visa process, DHS believes that this type of review would be unnecessarily duplicative of DOS's efforts.

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[16] The BIA and immigration judges, both under the jurisdiction of the Department of Justice, Executive Office for Immigration Review (EOIR), also make extreme hardship determinations for purposes of adjudicating applications for extreme hardship waivers under INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v), and for other immigration benefits and relief from exclusion, deportation, or removal.

[17] The proposed guidance on extreme hardship determinations can be viewed at *https://www.uscis.gov/sites/default/files/USCIS/Outreach/Policy%20Review/DRAFT_Extreme_Hardship_Policy_Manual_Guidance_for_public_comment.pdf.*

[18] For example, some commenters asked for a waiver for falsely claiming U.S. citizenship under INA section 212(a)(6)(C)(ii), 8 U.S.C. 1182(a)(6)(C)(ii). Another commenter asked that all parents who illegally reentered after having been previously deported should be pardoned, because, according to the commenter, most parents enter to reunite with their children and family. Many commenters felt that children are being punished for the actions of their parents. Other commenters asked that the inadmissibility ground under INA section 212(a)(9)(C), 8 U.S.C. 1182(a)(9)(C), be changed and the penalty reduced to a lesser inadmissibility period for which a waiver is available. All of these requests are outside of the scope of this rulemaking, which solely concerns the provisional waiver of the grounds of inadmissibility described in INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i), as authorized by INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v).

[19] DHS may waive the ground of inadmissibility described in INA section 212(a)(6)(E)(i), 8 U.S.C. 1182(a)(6)(E)(i), for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, provided the individual meets all other requirements. *See* INA section 212(d)(11), 8 U.S.C. 1182(d)(11).

[20] Of the commenters who asked DHS to expand the provisional waiver process to include waivers of other grounds of inadmissibility, many requested that DHS specifically include the Application for Permission to Reapply for Admission into the United States After Deportation or Removal, Form I–212.

[21] It was often unclear if the commenters sought implementation of new waivers or an expansion of the provisional waiver to include these grounds of inadmissibility.

[22] Upon departure from the United States to attend a consular interview, an individual no longer would be inadmissible as a result of being present in the United States without admission or parole under INA section 212(a)(6)(A)(i), 8 U.S.C. 1182(a)(6)(A)(i), or for lacking proper immigrant entry documents under INA section 212(a)(7)(A), 8 U.S.C. 1182(a)(7)(A).

Because the text of the statute forecloses the issue, DHS also rejects the suggestion to expand the provisional waiver process to include individuals who are inadmissible based on a return (or attempted return) without admission after previous immigration violations under INA section 212(a)(9)(C)(i), 8 U.S.C. 1182(a)(9)(C)(i). The relevant forms of relief for individuals who are inadmissible under that section are found at INA section 212(a)(9)(C)(ii) and (iii), 8 U.S.C. 1182(a)(9)(C)(ii) and (iii). *See Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006). Under the statute, waivers under INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v), cannot be used to relieve an applicant from inadmissibility under INA section 212(a)(9)(C)(i), 8 U.S.C. 1182(a)(9)(C)(i).

6. Reason-to-Believe Standard

Under current regulations, USCIS must deny a provisional waiver application if USCIS has "reason to believe" that the applicant may be subject to a ground of inadmissibility other than unlawful presence at the time of the immigrant visa interview abroad ("reason-to-believe standard"). 8 CFR 212.7(e)(4)(i).[23] Commenters asked DHS to clarify the reason-to-believe standard and to train officers[24] so that they properly apply the standard. Many argued that USCIS often applies the standard too rigidly by denying applications on mere suspicion, rather than actually adjudicating the relevant inadmissibility concerns consistent with applicable law relating to these grounds.

Commenters also urged DHS to expand the scope of the January 24, 2014 field guidance memorandum on the reason-to-believe standard.[25] Commenters specifically asked DHS to direct USCIS officers to consider the totality of the evidence when assessing whether other grounds of inadmissibility apply to an applicant, and to issue Requests for Evidence (RFEs) related to such grounds prior to denying a provisional waiver application for mere suspicion that such grounds apply. Commenters criticized the lack of issuance of RFEs or Notices of Intent to Deny (NOIDs), as well as USCIS' use of standard denial template language when denying a provisional waiver application under the reason-to-believe standard. Commenters stated that the use of these denial templates implies that USCIS does not consider the evidence that applicants submit to show that they are in fact not inadmissible on other grounds. In addition, the commenters stated that the templates did not provide sufficient information to indicate why USCIS determined it had reason to believe that the applicant would be inadmissible at the time of the immigrant visa interview, thus preventing applicants from addressing the agency's concerns upon reapplication. Commenters requested that USCIS instruct its officers to clearly articulate the fact specific circumstances that led them to deny an application for "reason to believe" that the applicant is inadmissible on other grounds.[26] A couple of commenters suggested that DHS make exceptions to the reason-to-believe standard for certain circumstances or classes of individuals.

Considering the confusion that has resulted from application of the reason-to-believe standard, DHS is eliminating the standard from the provisional waiver process in this final rule. Under the 2013 Rule, an approved provisional waiver would take effect if DOS subsequently determined that the applicant was ineligible for an immigrant visa only on account of the 3- or 10-year unlawful presence bar under INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i). Accordingly, DHS had originally incorporated the reason-to-believe standard in the 2013 Rule to preclude individuals from obtaining provisional waivers if they may have triggered other grounds of inadmissibility. DHS reasoned, in part, that because the goal of the provisional waiver process was to streamline immigrant visa processing, it would be of little benefit to applicants or to DHS to grant provisional waivers to applicants who would eventually be denied immigrant visas based on other grounds of inadmissibility.

Since the implementation of the provisional waiver program, however, stakeholders have raised concerns over the application of the reason-to-believe standard. Among other things, DHS understands that the standard causes confusion for applicants, as evidenced by the comments submitted to this rule. Despite the Department's repeated attempts to explain the reason-to-believe standard, for example, commenters continue to erroneously believe that when USCIS denies a provisional waiver application under the reason-to-believe standard, the agency has actually made an inadmissibility determination with respect to the relevant other ground(s) of inadmissibility.

Alternatively, as explained in the 2013 Rule, it would be counterproductive for USCIS to make other inadmissibility determinations during the adjudication of provisional waiver applications, given DOS's role in the immigrant visa process. It is DOS, and not USCIS, that generally determines admissibility under INA section 212(a), 8 U.S.C. 1182(a), as part of the immigrant visa process, which includes an in-depth, in-person interview conducted by DOS consular officers. Moreover, it is U.S. Customs and Border Protection (CBP) that ultimately determines admissibility at the time that individuals seek admission at a port of entry. *See* INA sections 204(e), 221(h); 8 U.S.C. 1154(e), 1201(h). It is thus generally not USCIS's role to determine whether an individual applying for an immigrant visa, or for admission as an immigrant at a U.S. port of entry, is admissible to the United States. Any assessment by USCIS with respect to other grounds of inadmissibility would be, at best, advisory in nature and would likely cause even greater confusion for applicants.

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[23] That regulation reads: "Ineligible aliens. Notwithstanding paragraph (e)(3) of this section, an alien is ineligible for a provisional unlawful presence waiver under paragraph (e) of this section if: (i) USCIS has reason to believe that the alien may be subject to grounds of inadmissibility other than unlawful presence under section 212(a)(9)(B)(i)(I) or (II) of the Act at the time of the immigrant visa interview with the Department of State." 8 CFR 212.7(e)(4)(i).

[24] USCIS has continually trained its officers on all aspects of the provisional waiver adjudication, including how to determine whether individuals may be subject to additional inadmissibility grounds at the time of the immigrant visa interview. However, since USCIS is removing the reason-to-believe standard as a basis for eligibility, we will no longer be training officers on application of this specific standard.

[25] *See* USCIS Memorandum, Guidance Pertaining to Applicants for Provisional Unlawful Presence Waivers (Jan. 24, 2014), *available at http://www.uscis.gov/sites/default/files/files/nativedocuments/2014-0124_Reason_To_Believe_Field_Guidance_Pertaining_to_Applicants_for_Provisional_Unlawful_Presence_Waivers-final.pdf.*

[26] These commenters suggested adding specific regulatory text in 8 CFR 212.7(e)(4) and 8 CFR 212.7(e)(9) that would require officers to consider the totality of the circumstances and to recount particular facts of the case when denying waiver applications under the reason-to-believe standard.

These considerations have prompted DHS to revisit the current approach. In this final rule, DHS has decided to eliminate the reason-to-believe standard as a basis for denying provisional waiver applications. Accordingly, when adjudicating such applications, USCIS will only consider whether extreme hardship has been established and whether the applicant warrants a favorable exercise of discretion. However, although this final rule eliminates the reason-to-believe standard, the final rule retains the provision that provides for the automatic revocation of an approved provisional waiver application if the DOS consular officer ultimately determines that the applicant is ineligible for the immigrant visa based on other grounds of inadmissibility. *See* 8 CFR 212.7(e)(14)(i). DHS thus cautions and reminds individuals that even if USCIS approves a provisional waiver application, DOS may still find the applicant inadmissible on other grounds at the time of the immigrant visa interview. If DOS finds the applicant ineligible for the immigrant visa or inadmissible on grounds other than unlawful presence, the approval of the provisional waiver application is automatically revoked. In such cases, the individual may again apply for a waiver of the unlawful presence ground of inadmissibility, in combination with any other waivable grounds of inadmissibility, by using the Form I–601 waiver process. As in all discretionary matters, DHS also has the authority to deny provisional waiver applications as a matter of discretion even if the applicant satisfies the eligibility criteria. *See* 8 CFR 212.7(e)(2)(i). Additionally, USCIS may reopen and reconsider its decision to approve or deny a provisional waiver before or after the waiver becomes effective if it is determined that the decision was made in error. *See* 8 CFR 212.7(e)(13) and 8 CFR 212.7(a)(4)(v).

As has always been the case, DHS will continue to uphold the integrity and security of the provisional waiver process by conducting full background and security checks to assess whether an individual may be a threat to national security or public safety. If the background check or the individual's immigration file reveals derogatory information, including a criminal record, USCIS will analyze the significance of the information and may deny the provisional waiver application as a matter of discretion.[27]

Finally, the extreme hardship and discretionary eligibility assessments made during a provisional waiver adjudication could be impacted by additional grounds of inadmissibility and other information that was not known and therefore not considered during the adjudication. Accordingly, USCIS is not bound by these determinations when adjudicating subsequent applications filed by the same applicant, such as an application filed to waive grounds of inadmissibility, including a waiver of the unlawful presence grounds of inadmissibility. In other words, because separate inadmissibility grounds and material information not before USCIS at the time of adjudication may alter the totality of the circumstances present in an individual's case, a prior determination that an applicant's U.S. citizen or LPR spouse would suffer extreme hardship if the applicant were refused admission (and that the applicant merits a provisional waiver as a matter of discretion) does not dictate that USCIS must make the same determination in the future, although the factors and circumstances underlying the prior decision may be taken into account when reviewing the cases under the totality of the circumstances.

7. Individuals With Scheduled Immigrant Visa Interviews

The proposed rule would have made certain immediate relatives of U.S. citizens ineligible for provisional waivers if DOS had initially acted before January 3, 2013 to schedule their immigrant visa interviews. DHS had also proposed to make other applicants ineligible if DOS initially acted before the effective date of this final rule to schedule their immigrant visa interviews. *See* 80 FR 43338, 43343 (July 22, 2015). These date restrictions were intended to make the provisional waiver process more operationally manageable and to avoid processing delays in the immigrant visa process. Commenters suggested that DHS either eliminate these restrictions or apply the January 3, 2013 restriction to all potential applicants.[28] Some commenters argued that DHS should eliminate these restrictions altogether for humanitarian reasons. Other commenters pointed out that the cutoff dates will cause preference-based immigrants difficulties with their priority dates.

In response to comments, and after consulting with DOS, DHS is eliminating the restrictions based on the date that DOS acted to schedule the immigrant visa interview. USCIS will adjust its processing of petitions and applications so that neither DOS nor USCIS will be adversely affected by the elimination of this restriction. Please note, however, that elimination of these date restrictions does not alter other laws and regulations relating to the availability of immigrant visas. Applicants will still be unable to obtain immigrant visas until an immigrant visa number is available based on the applicant's priority date. Applicants will need to act promptly, once DOS notifies them that they can file their immigrant visa application. If applicants do not apply within one year of this notice, DOS has authority to terminate their registration for an immigrant visa. *See* INA section 203(g), 8 U.S.C. 1153(g); *see also* 22 CFR 42.8(a). That action will also result in automatic revocation of the approval of the related immigrant visa petition. 8 CFR 205.1(a)(1).

In such a situation, applicants will have two options for continuing to pursue a provisional waiver. One option is for an applicant to ask DOS to reinstate the registration pursuant to 22 CFR 42.83(d). If DOS reinstates the registration, approval of the immigrant visa petition is also reinstated. Once such an applicant has paid the immigrant visa processing fee for the related immigrant visa application, the applicant can apply for a provisional waiver. A second option is for the relevant immigrant visa petitioner to file a new immigrant visa petition with USCIS. If USCIS approves the new immigrant visa petition, the beneficiary could then apply for the provisional waiver after paying the immigrant visa processing fee based on the new petition if otherwise eligible.

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[27] Under current USCIS policy, officers adjudicating provisional waiver applications may issue a Request for Evidence (RFE) to address deficiencies in the extreme hardship showing or to resolve issues that may impact their exercise of discretion. USCIS will retain this practice. To maintain the streamlined nature of the program, USCIS retains the 30-day response time to any RFE issued in connection with provisional waiver applications. *See* USCIS Memorandum, Standard Timeframe for Applicants to Respond to Requests for Evidence Issued in Relation to a Request for a Provisional Unlawful Presence Waiver, Form I–601A (Mar. 1, 2013), *available at http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2013/I-601A_30-Day_RFE_PM.pdf.*

[28] One commenter also asked that DHS allow individuals to reopen their "visa cases" and to file applications for provisional waivers. The commenter explained that many individuals let their DOS National Visa Center (NVC) cases lapse because they cannot leave to seek their visas and because ameliorative immigration legislation had failed to pass. The commenter asked that the DOS NVC reopen cases for those who have approved petitions so that they may apply for provisional waivers. DHS will not adopt this suggestion. DOS—and not DHS—will continue to determine whether to reopen immigrant visa application cases. Any visa applicant seeking to reopen such a case should consult with DOS. An individual may file a provisional waiver if he or she meets the provisional waiver requirements, as outlined in 8 CFR 212.7(e).

8. Individuals in Removal Proceedings

Commenters requested that DHS eliminate restrictions that prevent individuals in removal proceedings from seeking provisional waivers. Under the current regulations, those in removal proceedings may apply for and be granted provisional waivers only if their removal proceedings have been and remain administratively closed. *See* 8 CFR 212.7(e)(4)(v). Rather than excluding individuals whose removal proceedings are not administratively closed from obtaining provisional waivers, commenters asserted that DHS should find a way to allow them to apply for such waivers. Commenters suggested that once an individual in removal proceedings has a provisional waiver, he or she should be able to move to either dismiss or terminate proceedings or seek cancellation of the Notice to Appear (NTA)[29] so that he or she may depart to seek consular processing of an immigrant visa application. According to commenters, such a process would also ensure that an individual who is issued an NTA while his or her provisional waiver application is pending does not automatically become ineligible for the waiver.

Another commenter noted that immigration courts are severely backlogged and that individuals in removal proceedings often have to wait months or years before their cases can be scheduled or heard. This commenter asserted that requiring the case to be administratively closed before an individual may apply for the provisional waiver places an undue burden on the courts and also creates significant delays. Commenters generally believed that it would be more efficient if individuals were able to pursue provisional waivers and request termination or dismissal of proceedings upon approval of the waivers. They requested that the regulations and the provisional waiver application (Form I–601A) clarify that removal proceedings may be resolved by termination, dismissal, or a grant of voluntary departure if the provisional waiver is approved. Commenters believed that such a solution would simplify the provisional waiver process, improve efficiency in the immigration court system, and further the spirit of expanding the process to all individuals who are statutorily eligible for waivers of the unlawful presence ground of inadmissibility at INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i).

Due to agency efficiency and resource concerns, DHS declines to adopt the above recommendations. On November 20, 2014, the Secretary directed the Department's immigration components—USCIS, ICE, and CBP—to exercise prosecutorial discretion, when appropriate, as early as possible in proceedings to ensure that DHS's limited resources are devoted to the greatest degree possible to the pursuit of enforcement priorities.[30] Prosecutorial discretion applies not only to the decision to issue, serve, file, or cancel an NTA, but also to other broad ranges of discretionary measures.[31] To promote docket efficiency and to ensure that finite enforcement resources are used effectively, ICE carefully reviews cases pending before the Department of Justice's Executive Office for Immigration Review (EOIR) to ensure that all cases align with the agency's enforcement and removal policies. As such, once an NTA is issued, ICE attorneys are directed to review the case, at the earliest opportunity, for the potential exercise of prosecutorial discretion.[32] The Department of Justice (DOJ) likewise instructs its immigration judges to use available docketing tools to ensure fair and timely resolution of cases, and to ask ICE attorneys at master calendar hearings whether ICE is seeking dismissal or administrative closure of a case.[33] In general, those who are low priorities for removal and are otherwise eligible for LPR status may be able to apply for provisional waivers. Among other things, ICE may agree to administratively close immigration proceedings for individuals who are eligible to pursue a provisional waiver and are not currently considered a DHS enforcement priority. ICE also works to facilitate, as appropriate, the timely termination or dismissal of administratively closed removal proceedings once USCIS approves a provisional waiver.

DHS believes the aforementioned steps being undertaken by ICE and EOIR to determine whether cases should be administratively closed effectively balances the commenters' provisional waiver eligibility concerns and agency resources in considering the exercise of prosecutorial discretion. Consequently, this rule has not changed the provisional waiver process and will not permit individuals in active removal proceedings to apply for or receive provisional waivers, unless their cases are administratively closed. The Department believes that current processes provide ample opportunity for eligible applicants to seek a provisional waiver, while improving the allocation of government resources and ensuring national security, public safety, and border security.

9. Individuals Subject to Final Orders of Removal, Deportation, or Exclusion

Commenters asked DHS to provide eligibility for provisional waivers to individuals who are subject to final orders of removal, deportation, or exclusion. Commenters asserted that many of these individuals may already request consent to reapply for admission, under 8 CFR 212.2(j), by filing an Application for Permission to Reapply for Admission into the United States After Deportation or Removal, Form I–212, before departing the United States for immigrant visa processing. Upon receiving such consent, the individual's order of removal, deportation, or exclusion would no longer bar him or her from obtaining an immigrant visa abroad. One commenter reasoned that providing eligibility to spouses and children with removal orders would permit more families to stay together.

Many commenters suggested that USCIS allow individuals to file provisional waiver applications "concurrently"[34] with Form I–212 applications for consent to reapply for admission. These commenters believed that requiring separate or consecutive processing of the two applications when a domestic process already exists for both is unnecessary, inefficient, and a waste of USCIS' resources. In support of their argument, commenters also referenced 2009 USCIS procedures for the adjudication of Form I–601 applications for adjudication officers stationed abroad. Under these procedures, an individual whose Form I–601 application is granted would also normally obtain approval of a Form I–212 application, as both forms require that the applicant show that he or she warrants a favorable exercise of discretion.

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[29] Notices to Appear (NTAs) are the charging documents that DHS issues to individuals to initiate removal proceedings.

[30] *See* Memorandum from Secretary Jeh Charles Johnson, DHS, Policies for Apprehension, Detention, and Removal of Undocumented Immigrants (Nov. 20, 2014), *available at https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.*

[31] *See id.*

[32] *See* Memorandum from Riah Ramlogan, Acting Principal Legal Advisor, U.S. Immigration and Customs Enforcement (ICE), Guidance Regarding Cases Pending Before EOIR Impacted by Secretary Johnson's Memorandum Entitled Policies for the Apprehension, Detention and Removal Of Undocumented Immigrants (Apr. 6, 2015), *available at https://www.ice.gov/sites/default/files/documents/FOIA/2015/guidance_eoir_johnson_memo.pdf.*

[33] *See* Memorandum from Brian M O'Leary, Chief Immigration Judge, EOIR, Operating Policies and Procedures Memorandum 15–01: Hearing Procedures for Cases Covered by New DHS Priorities and Initiatives (Apr. 6, 2015), *available at https://www.justice.gov/eoir/pages/attachments/2015/04/07/15-01.pdf.*

[34] Filing two or more immigration benefit requests together is often referred to as "concurrent" filing.

As a preliminary matter, DHS notes that requiring the filing of separate Forms I–601A and I–212 simply reflects the fact that they are intended to address two separate grounds of inadmissibility, each with different waiver eligibility requirements. In response to the comments, however, DHS has amended the rule to allow individuals with final orders of removal, deportation, or exclusion to apply for provisional waivers if they have filed a Form I–212 application seeking consent to reapply for admission and such an application has been conditionally approved.

Anyone who departs the United States while a final order is outstanding is considered to have executed that order. *See* INA section 101(g), 8 U.S.C. 1101(g); 8 CFR 241.7. The execution of such an order renders the individual inadmissible to the United States for a period of 5–20 years under INA section 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A). Certain individuals, however, may seek consent to reapply for admission to the United States before the period of inadmissibility has expired. *See* INA section 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii). DHS regulations provide a process for those in the United States to apply for such consent by filing a Form I–212 application before departing the United States. *See* 8 CFR 212.2(j). As with the provisional waiver process, the pre-departure approval of a Form I–212 application is conditioned on the applicant subsequently departing the United States. Thus, if an individual who is inadmissible under INA section 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A), obtains a conditional approval of his or her Form I–212 application while in the United States and thereafter departs to attend the immigrant visa interview abroad, he or she generally is no longer inadmissible under that section at the time of the immigrant visa interview and can be issued an immigrant visa.

Given that an applicant still has to demonstrate visa eligibility, including admissibility, at the time of the immigrant visa interview and that DHS has decided to eliminate the reason-to-believe standard, the Department believes the goals of the provisional waiver process are supported by making it available to those with final orders only if they already have conditionally approved a Form I–212 application. The final rule thus extends eligibility for provisional waivers to such individuals. *See* 8 CFR 212.7(e)(4)(iv). Such an individual, however, must have the conditionally approved Form I–212 application at the time of filing the provisional waiver application. *See* 8 CFR 212.7(e)(4)(iv). USCIS will deny a provisional waiver application if the applicant's Form I–212 application has not yet been conditionally approved at the time the individual files his or her provisional waiver application. Additionally, if during the immigrant visa interview the consular officer finds that the applicant is inadmissible on other grounds that have not been waived, the approved provisional waiver will be automatically revoked.[35] *See* 8 CFR 212.7(e)(14)(i).

Finally, DHS notes that approval of Forms I–601A and I–212 does not waive inadmissibility under INA section 212(a)(9)(C), 8 U.S.C 1182(a)(9)(C), for having returned to the United States without inspection and admission or parole after a prior removal or prior unlawful presence. *See* INA section 212(a)(9)(C)(ii), 8 U.S.C 1182(a)(9)(C)(ii); *Matter of Briones,* 24 I&N Dec. 355 (BIA 2007); *Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006).[36]

10. Individuals Granted Voluntary Departure

Commenters requested that DHS address how voluntary departure under INA section 240B, 8 U.S.C. 1229c, affects provisional waiver eligibility. One commenter asked that USCIS provide eligibility for provisional waivers to individuals who have been granted voluntary departure but who failed to depart as required. Another commenter requested that regulations and instructions should clarify that an individual in compliance with an order of voluntary departure is considered by USCIS: (a) Not to be currently in removal proceedings; and (b) not subject to a final order of removal.

DHS has determined that individuals granted voluntary departure will not be eligible for provisional waivers. First, if an individual obtains voluntary departure while in removal proceedings, the immigration judge is required by law to enter an alternate order of removal. *See* 8 CFR 1240.26(d). DHS cannot execute the alternate order of removal during the voluntary departure period because such an order is not yet in effect. But if the individual does not depart as required under the order of voluntary departure, the alternate order of removal automatically becomes fully effective without any additional proceeding. *See* 8 CFR 1240.26(d). Thus, an individual who fails to leave as required under a grant of voluntary departure will have an administratively final order of removal, and will thus be ineligible for a provisional waiver. *See* INA section 240B(d)(1), 8 U.S.C. 1229c(d)(1); 8 CFR 212.7(e)(4)(iv). Under current law, removal proceedings for such individuals are considered to have ended when the grant of voluntary departure, with an alternate removal order, becomes administratively final. *See* INA sections 101(a)(47), 240(c)(1)(A), 8 U.S.C. 1101(a)(47), 1229(a)(c)(1)(A); 8 CFR 241.1, 1003.39, 1241.1; *Matter of Shih,* 20 I&N Dec. 697 (BIA 1993).

Second, a fundamental premise for a grant of voluntary departure is that the individual who is granted voluntary departure intends to leave the United States as required. *See* INA section 240B(b)(1)(D), 8 U.S.C. 1229c(b)(1)(D); *Dada* v. *Mukasey,* 554 U.S. 1, 18 (2008). Allowing an individual whose voluntary departure period has not expired to apply for a provisional waiver would suggest that the individual is excused from complying with the order of voluntary departure. This result would contradict the purpose of voluntary departure—allowing the subject to leave promptly without incurring the future inadmissibility that results from removal. For these reasons, DHS did not modify the rule to allow those with grants of voluntary departure to apply for provisional waivers.

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[35] In such cases, however, the approved Form I–212 application will generally remain valid and the individual may apply for any available waivers, including waiver of the 3- and 10-year bars, by filing a Form I–601 application after the immigrant visa interview.

[36] Although DHS received no comments on the issue, DHS has also amended the regulatory text to provide additional clarity with respect to provisional waiver eligibility for certain individuals who have previously been removed. Prior to the changes made by this rule, 8 CFR 212.7(e)(4)(vii) provided that an alien who is "subject to reinstatement of a prior removal order under section 241(a)(5) of the Act" is not eligible for a provisional waiver. DHS recognizes that this regulatory text was unclear with respect to whether it applies to (1) an individual who is a "candidate" for reinstatement of removal or (2) an individual whose prior removal order has already been reinstated. To avoid confusion, DHS has amended the regulatory text in 8 CFR 212.7(e)(4)(v) to clarify that the prior removal order must actually be reinstated for an individual to be ineligible to apply for a provisional waiver under this provision. DHS notes, however, that USCIS is likely to deny as a matter of discretion a provisional waiver application when records indicate that the applicant is inadmissible under INA 212(a)(9)(C), 8 U.S.C 1182(a)(9)(C), for having unlawfully returned to the United States after a prior removal or prior unlawful presence. Moreover, even if such an individual obtains approval for a provisional waiver, such approval will be automatically revoked if he or she is ultimately determined to be inadmissible under that section.

11. Applications for Lawful Permanent Resident (LPR) Status

Under current regulations, an individual is ineligible for a provisional waiver if he or she has an Application to Register Permanent Residence or Adjust Status, Form I–485 ("application for adjustment of status"), pending with USCIS, regardless of whether the individual is in removal proceedings. *See* 8 CFR 212.7(e)(4)(viii). One commenter suggested that USCIS should allow those seeking LPR status to file applications for adjustment of status concurrently with provisional waiver applications, and that USCIS should hold such applications for adjustment of status in abeyance until final resolution of the provisional waiver applications. According to the commenter, this would provide applicants present in the United States the opportunity to obtain work authorization and to appeal any denial of their provisional waiver applications. The commenter suggested that upon approval of a provisional waiver application, USCIS should route the application for adjustment of status to DOS for consular processing of the applicant's immigrant visa abroad.

DHS declines to adopt this suggestion. DHS believes that the commenter misunderstands the purpose of filing applications for adjustment of status. Those applications may be filed only by individuals who are in the United States and meet the statutory requirements for adjustment of status. If the applicant is eligible for adjustment of status, approval of the application adjusts one's status to that of an LPR in the United States, thus making it unnecessary to go abroad and obtain an immigrant visa. For those who are in the United States but are not eligible for adjustment of status, filing an application for adjustment of status serves no legitimate purpose. These individuals may not adjust status in the United States and must instead depart the United States and seek an immigrant visa at a U.S. consulate through consular processing. As these individuals are not eligible for adjustment of status, DHS believes it is inappropriate to invite them to submit applications seeking adjustment of status. Moreover, DOS has its own application process for immigrant visas. Thus, even if USCIS were to forward a denied application for adjustment of status to DOS, that application would have no role in the individual's application process with DOS. The individual would still be required to submit the proper DOS immigrant visa application to seek his or her immigrant visa.

12. Additional Eligibility Criteria

A few commenters suggested that DHS consider imposing restrictions in the provisional waiver process, including by adding eligibility criteria for provisional waivers, to better prioritize the classes of individuals eligible to seek such waivers.[37] Two commenters suggested that the provisional waiver process should prioritize family members of U.S. citizens over those of LPRs. One commenter suggested using level of education as a factor for prioritizing applicants. This commenter implied that applicants should be prioritized if they have advanced degrees in science, technology, engineering, or mathematics fields. Additional suggestions included: (1) Making provisional waivers easier to obtain for couples who have children or have been married more than two years; (2) limiting the number or percentage of waivers that are made available to particular demographic groups within the United States; (3) combining eligibility for provisional waivers with "cross-chargeability" rules in the INA;[38] (4) prioritizing waivers for those with high school degrees or who paid their taxes; (5) making waivers available only to those who submit three letters of recommendation from community members; and (6) making waivers available only to those who can demonstrate proficiency with the English language or who enroll in English language classes.

DHS declines to impose limitations or eligibility requirements for obtaining provisional waivers beyond those currently provided by regulation or statute. *See* INA section 212(a)(9)(B)(v), 8 U.S.C 1182(a)(9)(B)(v); 8 CFR 212.7. In the 2013 Rule, DHS originally limited eligibility to seek such waivers through the provisional waiver process to ensure operational feasibility and reduce the risk of creating processing delays with respect to other petitions or applications filed with USCIS or DOS. Considering the agency's capacity and the efficiencies gained through the provisional waiver process, DHS now believes that the provisional waiver process should be made available to all statutorily eligible individuals. DHS is confident that the expansion will reduce family separation and benefit the U.S. Government as a whole, and that all agencies involved possess the operational capacity to handle the additional casework.

13. Bars for Certain Inadmissible Individuals

Two commenters suggested that those who have committed crimes should be precluded from participating in the provisional waiver process, and another commenter cautioned DHS against adopting a standard that would allow provisional waiver eligibility to the "wrong people," in the commenter's view, such as those who hate American values and principles.[39]

As indicated above, DHS continues to uphold the integrity and security of the provisional waiver process by conducting full background and security checks to assess whether an applicant may be a threat to national security or public safety. If the background check or the applicant's immigration file reveals derogatory information, including a criminal record, USCIS analyzes the significance of the information and may deny the provisional waiver application as a matter of discretion.

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[37] Many of the commenters who suggested additional eligibility criteria also believed that approved waivers should entitle individuals to adjust to LPR status in the United States. Others suggested that provisional waiver applicants should pay fines, and some of these commenters believed that paying fines should allow individuals to apply for adjustment of status as an alternative to consular processing. Many of these commenters believed that such changes would create efficiencies for both the applicant and the government. As explained throughout this rule, DHS cannot change the statutory requirements for adjustment of status in the United States. Similarly, USCIS cannot impose fines as part of its filing fees.

[38] Cross-chargeability is a concept employed by the INA in the context of applying the INA's numerical limits on immigrant visas, particularly the "per country" limitations that restrict the percentage of such visa numbers that may go to nationals of any one country. *See* generally INA sections 201, 202, and 203; 8 U.S.C. 1151, 1152, and 1153. Generally, an immigrant visa number that is allotted to an individual is "charged" to the country of his or her nationality. However, when application of the "per country" limits may lead to family separation, the immigrant visa number allotted to an individual may instead be charged to the country of nationality of that individual's spouse, parent, or child. *See* INA sections 202(b), 8 U.S.C. 1152(b); *see also* 22 CFR 42.12; Department of State, 9 Foreign Affairs Manual (FAM) ch. 503.2–4A, *available at https://fam.state.gov/FAM/09FAM/09FAM050302.html* (last visited Apr. 26, 2016).

[39] One of these commenters believed that, although accrual of unlawful presence is not desirable, serious criminality and evidence of violent behavior should be the deciding factors when determining whether to separate families. Absent these factors, the commenter reasoned, immediate family members of U.S. citizens and LPRs should be allowed to remain with their loved ones in the United States before consular processing.

D. Adjudication

1. Requests for Evidence (RFEs) and Notices of Intent To Deny (NOIDs)

Several commenters criticized USCIS' practice with respect to issuing Requests for Evidence (RFEs) or Notices of Intent to Deny (NOIDs) in cases where the agency ultimately denies provisional waiver applications. Commenters criticized USCIS for both (1) issuing denials without first submitting RFEs that provide applicants the opportunity to correct deficiencies, and (2) issuing RFEs that failed to clearly articulate the deficiencies in submitted applications. With respect to the latter, commenters indicated that RFEs tend to use boilerplate language that makes it impossible for applicants to respond effectively, especially with respect to assessments of extreme hardship or application of the reason-to-believe standard. Noting that terms such as "reason to believe" and "extreme hardship" are vague, commenters requested that USCIS issue detailed and case-specific RFEs or NOIDs (rather than templates) when the agency intends to deny applications, thereby giving applicants an opportunity to cure any deficiencies before such denials are issued.[40] Commenters also raised concerns with the number of days that USCIS provides applicants to respond to often lengthy RFEs, noting that, in most instances, USCIS provides only 30 days for such responses.

As provided in 8 CFR 212.7(e)(8), and notwithstanding 8 CFR 103.2(b)(16), USCIS may deny a provisional waiver without issuing an RFE or NOID. USCIS, however, is committed to issuing RFEs to address missing and critical information that relates to extreme hardship or that may affect how USCIS exercises its discretion. USCIS officers also have the discretion to issue RFEs whenever the officer believes that additional evidence would aid in the adjudication of an application. Due to the streamlined nature of the program, USCIS currently provides applicants only 30 days to respond to an RFE in such cases.[41]

USCIS will continue to issue RFEs in provisional waiver cases based on the current USCIS RFE policy[42] and to assess the effectiveness of its RFE practice in this area. In response to comments, however, the agency has instructed its officers to provide additional detail regarding application deficiencies in RFEs relating to claims of extreme hardship in order to better allow applicants to efficiently and effectively cure such deficiencies. USCIS will retain the 30-day RFE response period, because USCIS and DOS closely coordinate immigrant visa and provisional waiver application processing. The 30-day RFE response time streamlines USCIS processing, prevents lengthy delays at DOS, and allows applicants to complete immigrant visa processing in a timely manner.

As explained in the 2013 Rule, a NOID gives an applicant the opportunity to review and rebut derogatory information of which he or she may be unaware. Because provisional waiver adjudications do not involve full assessments of inadmissibility, however, USCIS is not issuing NOIDs describing all possible grounds of inadmissibility that may apply at the time of the immigrant visa interview. Rather, USCIS continues to decide an applicant's eligibility based on the submitted provisional waiver application and related background and security checks. If the applicant's provisional waiver is ultimately denied, he or she may file a new Form I–601A application in accordance with the form's instructions. Alternatively, the individual can file an Application for Waiver of Grounds of Inadmissibility, Form I–601, with USCIS after he or she attends the immigrant visa interview and after the DOS consular officer determines that the individual is inadmissible.

2. Motions To Reopen, Motions To Reconsider, and Administrative Appeals

A number of commenters requested that USCIS amend the regulations to allow applicants the opportunity to appeal, or otherwise seek reconsideration, of denied applications. Commenters stated that the only option for challenging wrongful denials is to file new applications or to hope that USCIS will exercise its *sua sponte* authority to reopen cases. Commenters felt that this policy damages the public's trust and fails to hold USCIS officers accountable for errors. One commenter also noted that although denied applicants remain eligible to apply for waivers through the Form I–601 waiver process after the immigrant visa interview abroad, some still choose not to pursue their immigrant visas because of the uncertainty and hardships associated with consular processing. Commenters argued that these individuals are likely to remain in the United States, thereby diminishing the benefits of the provisional waiver process. Consequently, commenters requested that DHS amend its regulations to institute a mechanism for administrative appeal or reconsideration. According to these commenters, such a mechanism would provide additional due process protections for those whose applications are erroneously denied, those who experience changed circumstances, and those without legal representation (including those who have a deficient or improper application filed by a notario or other individual not authorized to practice law in the United States).

DHS declines to allow applicants to appeal or otherwise seek reconsideration of denials. The final rule retains the prohibition on appeals and motions, other than *sua sponte* motions entertained by USCIS. As a preliminary matter, DHS disagrees that there is a legal due process interest in access to or eligibility for discretionary provisional waivers of inadmissibility. *See, e.g., Darif* v. *Holder,* 739 F.3d 329, 336 (7th Cir. 2014) (no due process interest in discretionary extreme hardship waiver).[43] Additionally, and as stated in the 2013 Rule, section 10(c) of the Administrative Procedure Act (APA), 5 U.S.C. 704, permits an agency to provide an administrative appeal if the agency chooses to do so. *See Darby* v. *Cisneros,* 509 U.S. 137 (1993). Due to efficiency concerns, DHS continues to believe that administrative appeals should be reserved for actions that involve a comprehensive, final assessment of an applicant's admissibility and eligibility for a benefit. The provisional waiver process does not involve such a comprehensive assessment, and the denial of such an application is not a final agency action for purposes of the APA. *See* 8 CFR

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[40] One commenter requested that USCIS ensure transparent processing of applications. USCIS is committed to providing processing information on its adjudication processes by including information on the form and its instructions. USCIS also intends to include a section in the USCIS Policy Manual on provisional waivers.

[41] *See* USCIS Memorandum, Standard Timeframe for Applicants to Response to Requests for Evidence Issued in Relation to a Request for a Provisional Unlawful Presence Waiver, Form I–601A (Mar. 1, 2013), available at *https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2013/I-601A_30-Day_RFE_PM.pdf.*

[42] *See* USCIS Memorandum, Requests for Evidence and Notices of Intent to Deny (June 3, 2013), available at *https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2013/June%202013/Requests%20for%20Evidence%20(Final).pdf.*

[43] Other courts of appeals have recognized that due process does not require an agency to provide for administrative appeal of its decisions. *See, e.g., Zhang* v. *U.S. Dep't of Justice,* 362 F.3d 155, 157 (2d Cir. 2004); *Loulou* v. *Ashcroft,* 354 F.3d 845, 850 (9th Cir. 2003); *Mendoza* v. *U.S. Att'y Gen.,* 327 F.3d 1283, 1289 (11th Cir. 2003); *Albathani* v. *INS,* 318 F.3d 365, 376 (1st Cir. 2003); *Guentchev* v. *INS,* 77 F.3d 1036, 1037–38 (7th Cir. 1996).

212.7(e)(9)(ii). If a provisional waiver application is denied, the applicant may either file a new provisional waiver application or seek a waiver through the Form I–601 waiver process after DOS conclusively determines that he or she is inadmissible under INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i). In contrast to denial of a Form I–601A application for a provisional waiver, the denial of a Form I–601 application is appealable. In this regard, the final eligibility determination as it relates to the Form I–601 application lies with the USCIS Administrative Appeals Office (AAO), and the final immigrant visa eligibility determination rests with DOS. *See* 2013 Rule, 78 FR at 555.

Moreover, the provisional waiver process is intended to be a streamlined process that is closely coordinated with DOS immigrant visa processing. Holding cases during an administrative appeal of a provisional waiver application would produce logistical complications for the respective agencies, interrupting the regular adjudication flow, and therefore would be counterproductive to streamlining efforts.

3. Confidentiality Provisions

As with the 2013 Rule, commenters asked DHS to include confidentiality protections so that denials of provisional waiver applications would not automatically trigger removal proceedings. The commenters asserted that the Department should provide regulatory assurances stating that DHS will not put provisional waiver applicants in removal proceedings, even if their applications are denied. According to the commenters, such assurances were necessary because a new Administration might institute a change in policy in this area.

DHS declines to adopt these suggestions as the Department already has effective policies on these issues. DHS focuses its resources on its enforcement priorities, namely threats to national security, border security, or public safety.[44] Similarly, USCIS continues to follow current agency policy on the issuance of NTAs, which are focused on public safety threats, criminals, and those engaged in fraud.[45] Consistent with DHS enforcement policies and priorities, the Department will not initiate removal proceedings against individuals who are not enforcement priorities solely because they filed or withdrew provisional waiver applications, or because USCIS denied such applications.

E. Filing Requirements and Fees

1. Concurrent Filing

One commenter requested that DHS allow for the concurrent filing of a Petition for Alien Relative, Form I–130 (“family-based immigrant visa petition”), with the application for a provisional waiver. The commenter reasoned that allowing the concurrent filing of the provisional waiver application and a family-based immigrant visa petition would create efficiencies for applicants and the U.S. Government by reducing paperwork and wait times. Other commenters asked that USCIS allow concurrent filing of a Form I–212 application for consent to reapply for admission with the provisional waiver application if the applicant also needs to overcome the inadmissibility bar for prior removal under INA section 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A), at the time of the immigrant visa interview. Given that processing of Form I–212 applications already takes place in the United States, these commenters believed that it would make sense to adjudicate the Form I–212 and provisional waiver applications at the same time and by the same officer.

DHS has considered these comments but maintains that concurrent filing would undermine the efficiencies that USCIS and DOS gain through the provisional waiver process. Currently, denials of family-based immigrant visa petitions are appealable to the BIA. *See* 8 CFR 1003.1(b)(5). Denials of other petitions also are generally appealable to the AAO. *See* 8 CFR 103.3.[46] If the denial of an immigrant visa petition is challenged on appeal, USCIS would have to either 1) hold the provisional waiver application until the decision on appeal is issued, or 2) deny the provisional waiver application and subsequently consider reopening it if the denial is overturned on appeal. Both scenarios produce administrative inefficiencies and could cause USCIS to incur additional costs for storing provisional waiver applications and transferring alien registration files (A-files) or receipt files between offices until the administrative appeals process is complete. Therefore, DHS has decided against allowing the concurrent filing of provisional waiver applications and immigrant visa petitions.

DHS also declines to allow concurrent filing of Form I–212 and provisional waiver applications. In the event that a Form I–212 application is denied, the applicant may file an administrative appeal with the AAO. If USCIS allowed the concurrent filing of Form I–212 and provisional waiver applications, USCIS would again be faced with administratively inefficient options in cases where the Form I–212 application is denied and the applicant seeks to appeal that denial. As noted above, the agency would again be faced with the choice of either 1) holding the provisional waiver application in abeyance until the appeal is decided, or 2) denying the provisional waiver application and later reopening it if the appeal is sustained. As previously discussed, the provisional waiver process is intended to streamline DHS and DOS processes ahead of immigrant visa interviews at consular posts. The delay in the adjudication of provisional waiver applications that would result from allowing additional procedural steps would decrease the efficiencies derived from the provisional waiver process and thus be counterproductive to these streamlining efforts. As indicated previously in this preamble, however, DHS will allow an individual who has been approved for consent to reapply for admission under 8 CFR 212.2(j) to seek a provisional waiver. By allowing individuals with conditionally approved Form I–212 applications to apply for provisional waivers, DHS further expands the class of eligible individuals who can benefit from provisional waivers and, at the same time, maintains the program's streamlined efficiency.

2. Fines or Penalties

Several commenters believed that DHS should require provisional waiver applicants to pay fines or fees of up to several thousand dollars to remain in the United States and obtain LPR status. Other commenters appeared to suggest that DHS should generally impose financial penalties on individuals unlawfully in the United States.

Congress has given the Secretary the authority to administer and enforce the immigration and naturalization laws of the United States. *See* 6 U.S.C. 112, 202(3)–(5); *see also* INA section 103, 8 U.S.C. 1103(a). The Secretary also is authorized to set filing fees for immigration benefits at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to refugees, asylum applicants, and other immigrants. *See* INA section 286(m), 8 U.S.C. 1356(m). This fee revenue remains available to DHS to provide immigration and naturalization benefits. *See* INA section 286(n), 8 U.S.C. 1356(n). DHS has already established an appropriate filing fee for the Form I–601A application as authorized by the statute. Congress, however, has not imposed a specific fine or penalty on provisional waiver applicants or individuals unlawfully present in the United States. Congress also did not authorize any type of independent lawful status for such applicants. Such fines, as with a general fine for unlawful presence, would be unrelated to the costs incurred during the adjudication of immigration benefits. USCIS does not have the authority to impose such civil penalties.

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[44] *See* Memorandum from Secretary Jeh Charles Johnson, DHS, Policies for Apprehension, Detention, and Removal of Undocumented Immigrants (Nov. 20, 2014), *available at https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.*

[45] *See* USCIS Memorandum, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens (Nov. 7, 2011), available at *www.uscis.gov/NTA.*

[46] See also AAO's Practice Manual, Chapter 3, Appeals, *available at https://www.uscis.gov/about-us/directorates-and-program-offices/administrative-appeals-office-aao/administrative-appeals-office-aao.*

3. Fees

DHS received several comments related to fees. One commenter noted that Congress has already approved DHS's funding for this fiscal year, and that Congress did not authorize changes to the Department's budget. The commenter thus requested an explanation as to why DHS believes that funding is available to effectuate the changes proposed by this rule. Another commenter believed that DHS and DOS should return immigrant visa fees to applicants if their provisional waiver applications are ultimately denied. One commenter stated that the derivative spouses of primary beneficiaries should pay separate application fees.

In contrast to many other U.S. Government agencies, USCIS does not rely on appropriated funds for most of its budget. Rather, USCIS is a fee-based agency that is primarily funded by the fees paid by applicants and petitioners seeking immigration benefits. USCIS relies on these fees to fund the adjudication of provisional waiver applications; none of the funds used for these adjudications comes from funds appropriated annually by Congress.

Furthermore, as noted above, the fees received with provisional waiver applications and immigrant visa petitions cover the costs of adjudication. These fees are necessary regardless of whether the application or petition is ultimately approved or denied. Therefore, USCIS does not return fees when a petition, application, or request is denied. For its part, DOS determines its own fees pursuant to its own authorities. *See, e.g.,* INA section 104, 8 U.S.C. 1104; 8 U.S.C. 1714; *see also* 22 CFR 22.1, 42.71(b).

Finally, an individual who applies for a provisional waiver must submit the application with the appropriate filing and biometrics fees, as outlined in the form's instructions and 8 CFR 103.7, even if the individual is a derivative beneficiary.

4. Premium Processing

A few commenters recommended that DHS establish a premium processing fee to expedite processing of provisional waiver applications. One commenter indicated that the processing time for a provisional waiver application should not exceed 30 days under premium processing.

DHS declines to adopt the suggestion to extend premium processing to provisional waiver applications. The INA permits certain employment-based petitioners and applicants for immigration benefits to request premium processing for a fee. *See* INA section 286(u), 8 U.S.C. 1356(u). DHS has established the current premium processing fee at $1,225.[47] *See* 8 CFR 103.7(b)(1)(i)(RR); *see also* 8 CFR 103.7(e) (describing the premium processing service). The premium processing fee, which is paid in addition to the base filing fee, guarantees that USCIS processes a benefit request within 15 days. *See* 8 CFR 103.7(e)(2). If USCIS cannot take action within 15 days, USCIS refunds the premium processing fee.[48] *Id.*

DHS has not extended premium processing to any immigration benefit except for those authorized under INA section 286(u), 8 U.S.C. 1356(u). Notably, INA section 286(u) expressly authorizes premium processing only for employment-based petitions and applications. Even if USCIS could develop an expedited processing fee for other benefits, USCIS would not apply it to the provisional waiver process, as that process requires background checks over which USCIS does not control timing. Additionally, determining an appropriate fee for such a new process would require USCIS to estimate the costs of that service and engage in separate notice-and-comment rulemaking to establish the new fee. Thus, DHS will not establish a Form I–601A premium processing fee at this time.

5. Expedited Processing

One commenter stated that the processing time for a provisional waiver application should generally not exceed 30 days. Other commenters urged USCIS to expedite the processing of applications for family members of active duty members or honorably discharged veterans of the U.S. Armed Forces. One commenter asked that DHS and DOS expedite the immigrant visa interviews of individuals with approved provisional waivers.[49]

DHS did not incorporate these suggestions in this final rule. DHS believes the provisional waiver process is well managed, and officers adjudicate cases quickly after receiving an applicant's background check results. Creating an expedited process for certain applicants, including relatives of military members and veterans, would create inefficiencies and potentially slow the process for all provisional waiver applicants.[50]

Additionally, even if DHS were to expedite the provisional waiver process for certain applicants, they would still be required to spend time navigating the DOS immigrant visa process. DHS believes that expediting the processing of provisional waiver applications for certain individuals would generally not significantly affect the processing time of their immigrant visa processing with DOS. Individuals often file their provisional waiver applications with USCIS while the DOS National Visa Center (NVC) pre-processes their immigrant visa applications. The NVC pre-processing of immigrant visa applications usually runs concurrently with the USCIS processing of provisional waiver applications. Thus, even if DHS were to expedite the provisional waiver process for certain applicants, those applicants would nevertheless be required to wait for DOS to complete its process. Additionally, the processing time for immigrant visa applications at the NVC largely depends on other outside factors, including whether applicants submit necessary documents to the NVC on a timely basis throughout the process. In many cases, including those in which applicants delay in getting necessary documents to the NVC, immigrant visa processing would not be affected by the expediting of other processes.

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[47] The fee was originally set at $1,000, and may be adjusted according to the Consumer Price Index (CPI). *See* INA section 286(u), 8 U.S.C. 1356(u).

[48] Even if USCIS refunds this fee, USCIS generally continues expedited processing of the benefit request.

[49] One commenter also urged CBP to expedite Freedom of Information Act requests so that individuals are able to obtain the information they need to assess eligibility and complete their applications. The commenter indicated that expanding the provisional waiver process is useless unless potential applicants are given access to their files. DHS declines to adopt this suggestion as it is beyond the scope of this rulemaking.

[50] Each time USCIS has to set aside a regularly filed case to prioritize the adjudication of another case, it delays those cases that were filed prior to the prioritized case and disrupts the normal adjudication process.

DHS reminds applicants, however, that they may request expedited adjudication of a provisional waiver application according to current USCIS expedite guidance.[51] Also, relatives of current and former U.S. Armed Forces members may seek USCIS assistance through the agency's special military help line.[52]

6. Background Checks and Drug Testing

One commenter requested that USCIS conduct background checks and drug testing for provisional waiver applicants.[53]

DHS is not modifying the background checks and biometrics requirement in this rule to include drug testing. Individuals seeking provisional waivers already must provide biometrics for background and security checks. Based in part on the background check results, USCIS determines whether the applicant is eligible for the waiver, including whether a favorable exercise of discretion is warranted. DHS only collects the biometric information needed to run such checks and to adjudicate any requested immigration benefit. Additional testing, such as a medical examination, is required within the DOS immigrant visa process and for DOS's visa eligibility determinations. Performing medical tests as part of the provisional waiver process would duplicate the DOS process.

F. Comments Outside the Scope of This Rulemaking

DHS received a number of comments that are outside the scope of this rule. For example, one commenter asked USCIS to publish guidance on whether an individual who is subject to the 3- or 10-year unlawful presence bar, but who has already returned to the United States, could satisfy the requisite inadmissibility period while in the United States. Other commenters suggested that those with approved provisional waivers should be permitted to seek adjustment of status in the United States. Many asked DHS to extend the period for accepting adjustment of status applications pursuant to INA section 245(i), 8 U.S.C. 1255(i). Others requested that DHS: create a new waiver for people who leave the United States because of family emergencies; make certain immigrant visa categories immediately available or create new immigrant visa categories; Create new inadmissibility periods for purposes of INA sections 212(a)(9)(B)(i) and 212(a)(9)(C), 8 U.S.C. 1182(a)(9)(B)(i) and 1182(a)(9)(C); and generally modify immigration laws, particularly those perceived as harsh.

Other commenters requested changes to DOS consular processes or regulations, which are also not within the scope of this rule. For example, commenters asked DHS to instruct DOS consular officers to issue immigrant visas to applicants with approved provisional waiver applications.[54] One commenter criticized the inability to appeal immigrant visa denials to DHS as unfair, even though DOS, not DHS, adjudicates immigrant visa applications. *See generally* 22 CFR part 42. Similarly, another commenter stated that individuals whose immigrant visa applications have been denied by DOS must be allowed to reopen those applications so that they can be allowed to file provisional waiver applications.[55]

Because DHS believes that these suggestions are outside the scope of this rule, the suggestions will not be addressed in this rule.

G. Comments on the Executive Orders 12866/13563 Analysis

In one comment requesting that the DOS visa interview scheduling cut-off date be eliminated as an ineligibility requirement, the commenter cited DHS's acknowledgement that the 2013 Rule's provisional waiver application projections were overestimated. Because of the overestimation in the 2013 Rule, the commenter suggested that DHS likely overestimated provisional waiver applications resulting from the 2015 Proposed Rule. Since publication of the 2015 Proposed Rule, DHS has adjusted its application projection method based on new, revised data from DOS and this rule's new provisional waiver eligibility criteria. DHS believes this new method will better project the provisional waiver applications resulting from the rule.

DHS received many comments affirming the benefits of the provisional unlawful presence waiver described in the 2015 Proposed Rule. Commenters agreed that the provisional waiver's expansion would provide greater certainty for families, promote family unity, improve administrative efficiency, improve communication between DHS and other government agencies, facilitate immigrant visa issuance, save time and resources, and relieve the emotional and financial hardships that family members experience from separation.

DHS also received several economic-related comments that were outside the scope of this rule. Several commenters mentioned that obtaining legal status, which both the provisional and general unlawful presence waivers may facilitate, provides a significant benefit to the undocumented individual as well as American society. According to the commenters, this is because obtaining legal status tends to increase taxable income, reduce poverty, contribute to job growth, help businesses gain qualified employees, and add to consumer spending. Although DHS agrees that obtaining legal status provides important economic benefits to once-undocumented individuals, and the United States in general, those benefits are not directly attributable to the provisional waiver eligibility provided by this rule. Rather, obtaining a waiver of the unlawful presence ground of inadmissibility (provisional or not) is just one step in the process for gaining legal status, which USCIS hopes this rule will facilitate.

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[51] For guidance on USCIS expedite procedures, please visit *http://www.uscis.gov/forms/expedite-criteria*.

[52] Information about the military help line is available at *http://www.uscis.gov/military/military-help-line*. DHS encourages military families that need assistance to reach out to USCIS through the help line.

[53] Two commenters also asked that USCIS allow provisional waiver applicants to include medical examinations performed by USCIS-designated civil surgeons with their provisional waiver applications. These commenters believed that the opportunity to provide the results of the medical examination before departure for the immigrant visa interview would further streamline the process. The commenters also believed that applicants could either avoid the higher panel physician examination fee abroad, or detect and treat possible medical conditions that would render them ineligible for their immigrant visas before departure. One of these commenters also indicated that such a process would allow an applicant's representative to check the panel physician's work. DHS did not adopt this suggestion. Under DOS regulations, each immigrant visa applicant must be examined by a DOS-designated panel physician, *see* 22 CFR 42.66, and altering DHS regulations to permit submission of medical examinations with a provisional waiver application would not eliminate that requirement.

[54] To the extent that these comments are read to suggest that DOS should issue immigrant visas to individuals with approved provisional waiver applications without assessing whether such individuals are inadmissible for other reasons, DHS believes those comments are outside the scope of this rulemaking. To the extent that the comments are read to suggest that DOS should not re-adjudicate or "second-guess" USCIS's provisional waiver determinations, DHS notes that DOS does not reassess USCIS' provisional waiver determination. DOS, however, is required to assess whether an individual is ineligible for an immigrant visa, including whether an applicant is inadmissible. If the individual is inadmissible on a ground other than unlawful presence, or is otherwise ineligible for the immigrant visa, DOS may deny the individual's immigrant visa application, even if the provisional waiver was approved.

[55] As with other DOS processes, review of the denial of a visa application is governed by DOS regulations, not DHS regulations.

A different commenter asserted that non-U.S. citizen workers hurt the economy. DHS disagrees with this comment and finds that it is beyond the scope of this rule because obtaining a waiver of inadmissibility (provisional or not) for unlawful presence does not provide employment authorization for someone who is unlawfully present. Receiving such a waiver is just one step in the process for gaining the legal status required to lawfully work in the United States.

IV. Regulatory Amendments

After careful consideration of the public comments, as previously summarized in this preamble, DHS adopts the regulatory amendments in the proposed rule without change, except for the provisions noted below. In addition to these substantive changes, DHS also has made edits to the text of various provisions that do not change the substance of the proposed rule.

A. Amending 8 CFR 212.7(e)(1) To Clarify Which Agency Has Jurisdiction To Adjudicate Provisional Waivers

Currently, 8 CFR 212.7(e)(1) specifies that all provisional waiver applications, including an application made by an individual in removal proceedings before EOIR, must be filed with USCIS. The provision implies, but does not specifically state, that USCIS has exclusive jurisdiction to adjudicate and decide provisional waivers. With this final rule, DHS modifies the regulatory text to clarify that USCIS has exclusive jurisdiction, regardless of whether the applicant is or was in removal, deportation, or exclusion proceedings. *See* new 8 CFR 212.7(e)(2).

B. Removing the Reason-to-Believe Standard as a Basis for Ineligibility

Under the 2013 Rule, an individual is ineligible for a provisional waiver if "USCIS has reason to believe that the alien may be subject to grounds of inadmissibility other than unlawful presence under INA section 212(a)(9)(B)(i)(I) or (II), 8 U.S.C. 1182(a)(9)(B)(I) or (II), at the time of the immigrant visa interview with the Department of State." 8 CFR 212.7(e)(4)(i). The 2015 Proposed Rule proposed to retain this requirement but requested any alternatives that may be more effective than the current provisional waiver process or the amended process in the proposed rule. *See* 80 FR 43343. In response to comments, DHS is removing this standard as a basis for ineligibility for provisional waivers. *See* new 8 CFR 212.7(e)(4). DHS, however, retains 8 CFR 212.7(e)(14)(i), which provides that a provisional waiver is automatically revoked if DOS determines, at the time of the immigrant visa interview, that the applicant is inadmissible on any grounds of inadmissibility other than unlawful presence under INA section 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B). Revocation of the provisional waiver based on inadmissibility on other grounds, however, does not prevent the individual from applying for a general waiver under 8 CFR 212.7(a) to cure his or her inadmissibility under INA section 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B) or any other ground of inadmissibility for which a waiver is available.

C. Removing the DOS Visa Interview Scheduling Cut-Off Dates in 8 CFR 212.7(e)(4)(iv) and 212.7(e)(5)(ii)(G)

In the proposed rule, DHS sought to retain date restrictions that prevented immediate relatives of U.S. citizens from obtaining provisional waivers if DOS acted prior to January 3, 2013 to schedule their immigrant visa interviews. *See* 80 FR at 43343. DHS also proposed that other individuals (*i.e.,* individuals other than certain immediate relatives of U.S. citizens) would be ineligible for provisional waivers if DOS had acted on or before the effective date of this final rule to schedule the immigrant visa interview. *Id.* Furthermore, DHS proposed to reject provisional waiver applications that were not filed consistent with the above date restrictions. *See* proposed 8 CFR 212.7(e)(5)(G)(ii)(1) and (2). In response to comments, DHS has decided to eliminate these filing restrictions. *See* new 8 CFR 212.7(e)(4) and (5).

D. Allowing Individuals With Final Orders of Removal, Deportation, or Exclusion To Apply for Provisional Waivers

Since the inception of the provisional waiver process, individuals have been ineligible for provisional waivers if they are 1) subject to final orders of removal issued under INA sections 217, 235, 238, or 240, 8 U.S.C. 1187, 1225, 1228, or 1229a; 2) subject to final orders of exclusion or deportation under former INA sections 236 or 242, 8 U.S.C. 1226 or 1252 (pre-April 1, 1997), or 3) subject to final orders under any other provision of law (including an *in absentia* order of removal under INA section 240(b)(5), 8 U.S.C. 1229a(b)(5)). *See generally* 2013 Rule, 78 FR 536. As indicated in the response to comments on this subject in the preamble, DHS is amending the rule to provide eligibility for provisional waivers to certain individuals who are subject to an administratively final order of removal, deportation, or exclusion and therefore will be inadmissible under INA section 212(a)(9)(A)(i) or (ii), 8 U.S.C. 1182(a)(9)(A)(i) or (ii), upon departure from the United States. Under the final rule, such individuals will be eligible to apply for provisional waivers if they have been granted consent to reapply for admission under INA section 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii) and 8 CFR 212.2(j). *See* new 8 CFR 212.7(e)(4) (iv). However, they cannot file Form I–212 applications and provisional waiver applications concurrently. *See* new 8 CFR 212.7(e)(4)(iv).

Notwithstanding this change, individuals will remain ineligible for provisional waivers if 1) they have returned unlawfully to the United States after removal, and 2) CBP or ICE, after service of notice under 8 CFR 241.8, has reinstated a prior order of removal, deportation, or exclusion. Under INA section 241(a)(5), 8 U.S.C. 1231(a)(5), reinstatement of a such an order makes the individual ineligible for waivers of inadmissibility and other forms of relief. *See* new 8 CFR 212.7(e)(4)(v). Moreover, even in the absence of reinstatement, the individual's unauthorized return to the United States may be considered as an adverse discretionary factor in adjudicating a provisional waiver application. Finally, the approval of a provisional waiver application will be automatically revoked if the applicant is ultimately determined to be inadmissible under INA 212(a)(9)(C), 8 U.S.C 1182(a)(9)(C), for having unlawfully returned to the United States after a prior removal or prior unlawful presence.

E. Clarifying When an Individual Is Subject to Reinstatement and Ineligible for Provisional Waivers

Currently, an individual is ineligible for a provisional waiver if he or she is subject to reinstatement of a prior order under INA section 241(a)(5), 8 U.S.C. 1231(a)(5). *See* 8 CFR 212.7(e)(4)(vii). DHS retained this ineligibility criteria in the proposed rule. In this final rule, however, DHS clarifies which individuals are ineligible for provisional waivers based on application of the reinstatement of removal provision at INA section 241(a)(5), 8 U.S.C. 1231(a)(5). Under the final rule, an individual will be ineligible for a provisional waiver if ICE or CBP, after service of notice under 8 CFR 241.8, has reinstated the removal, deportation, or exclusion order prior to the individual filing the provisional waiver or while the provisional waiver application is pending. *See* new 8 CFR 212.7(e)(4)(v).

F. Miscellaneous Technical Amendments

In this final rule, DHS made several technical and non-substantive changes. First, DHS amended 8 CFR 212.7(e)(2) by adding the word "document" after the terms "employment authorization" and "advance parole." Additionally, DHS simplified the text of 8 CFR 212.7(e)(5). Currently, that provision outlines filing conditions, which are also provided in the instructions to provisional waiver applications. DHS, therefore, revised the provision to refer individuals to the filing instructions of the form.

V. Statutory and Regulatory Requirements

A. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

B. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

C. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a "significant regulatory action," although not an economically significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has reviewed this regulation. This effort is consistent with Executive Order 13563's call for agencies to "consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned."

1. Summary

After careful consideration of public comments on the 2015 Proposed Rule,[56] DHS adopts most of the regulatory amendments specified in the proposed rule without change, except for the provisions addressing ineligibility for: 1) reason to believe that the applicant may be inadmissible on grounds other than unlawful presence at the time of the DOS immigrant visa interview (8 CFR 212.7(e)(4)(i)); 2) DOS initially acting before January 3, 2013 or before the effective date of this final rule to schedule an applicant's immigrant visa interview (proposed 8 CFR 212.7(e)(4)(iv) and 212.7(e)(5)(ii)(G)); and 3) the applicant being subject to an administratively final order of exclusion, deportation, or removal ("final order")(8 CFR 212.7(e)(4)(vi)). With the adoption of most of the proposed regulatory amendments, DHS largely applies the 2015 Proposed Rule's economic analysis approach to this final rule. However, some changes to the analysis are necessary to capture the population of individuals now eligible for provisional waivers through this final rule's elimination and modification of certain ineligibility provisions just described and source data revisions.

This rule's expansion of the provisional waiver process will create costs and benefits to newly eligible provisional waiver (Form I–601A) applicants, their U.S. citizen or LPR family members, and the Federal Government (namely, USCIS and DOS), as outlined in Table 1. This rule will impose fee, time, and travel costs on an estimated 100,000 newly eligible individuals who choose to complete and submit provisional waiver applications and biometrics (fingerprints, photograph, and signature) to USCIS for consideration during the 10-year period of analysis (*see* Table 8). These costs will equal an estimated $52.4 million at a 7 percent discount rate and $64.2 million at a 3 percent discount rate in present value across the period of analysis. On an annualized basis, the costs will measure approximately $7.5 million at both 7 percent and 3 percent discount rates (*see* Table 1).

Newly eligible provisional waiver applicants and their U.S. citizen or LPR family members will benefit from this rule. Individuals applying for a provisional waiver will receive advance notice of USCIS' decision to provisionally waive their 3- or 10-year unlawful presence bar under INA section 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B), before they leave the United States for their immigrant visa interviews abroad. This offers applicants and their family members the certainty of knowing that the applicants have been provisionally approved for a waiver of certain unlawful presence grounds of inadmissibility before departing from the United States. Individuals with approved provisional waivers may experience shortened periods of separation from their family members living in the United States while they pursue immigrant visas abroad, thus reducing related financial and emotional strains on the families. USCIS and DOS will continue to benefit from the operational efficiencies gained from the provisional waiver's role in streamlining immigrant visa application processing, but on a larger scale than currently in place.

In the absence of this rule, DHS assumes that the majority of individuals who would have been newly eligible for provisional waivers under this rule will likely continue to pursue an immigrant visa through consular processing abroad and apply for waivers of unlawful presence through the Form I–601 process. Those who apply for unlawful presence waivers through the Form I–601 process will incur fee, time, and travel costs similar to individuals applying for waivers through the provisional waiver process. However, without this rule, those who must seek a waiver of inadmissibility abroad through the Form I–601 process after the immigrant visa interview may face longer separation times from their families in the United States and experience less certainty regarding the approval of a waiver of the 3- or 10-year unlawful presence bar before departing from the United States.

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[56] *See* 80 FR 43338 (July 22, 2015).

TABLE 1—TOTAL COSTS AND BENEFITS OF RULE, YEAR 1–YEAR 10

	10-Year present values		Annualized values	
	3% Discount rate	7% Discount rate	3% Discount rate	7% Discount rate
Total Costs:				
Quantitative	$64,168,205	$52,429,216	$7,522,471	$7,464,741
Total Benefits:				
Qualitative	Decreased amount of time that U.S. citizens or LPRs are separated from their family members with approved provisional waivers, leading to reduced financial and emotional hardship for these families.		Decreased amount of time that U.S. citizens or LPRs are separated from their family members with approved provisional waivers, leading to reduced financial and emotional hardship for these families.	
	Provisional waiver applicants will receive advance notice of USCIS' decision to provisionally waive their 3- or 10-year unlawful presence bar before they leave the United States for their immigrant visa interview abroad. This offers applicants and their family members the certainty of knowing that the applicants have been provisionally approved for a waiver before departing from the United States.		Provisional waiver applicants will receive advance notice of USCIS' decision to provisionally waive their 3- or 10-year unlawful presence bar before they leave the United States for their immigrant visa interview abroad. This offers applicants and their family members the certainty of knowing that the applicants have been provisionally approved for a waiver before departing from the United States.	
	Federal Government will achieve increased efficiencies by streamlining immigrant visa processing for applicants seeking inadmissibility waivers of unlawful presence.		Federal Government will achieve increased efficiencies by streamlining immigrant visa processing for applicants seeking inadmissibility waivers of unlawful presence.	

Note: The cost estimates in this table are contingent upon Form I–601A filing projections as well as the discount rates applied for monetized values.

2. Background

Individuals who are in the United States and seeking LPR status must either obtain an immigrant visa abroad through consular processing with DOS or apply to adjust status in the United States, if eligible. Those present in the United States without having been inspected and admitted or paroled are typically ineligible to adjust status in the United States. To obtain LPR status, such individuals must leave the United States for immigrant visa processing at a U.S. Embassy or consulate abroad. Because these individuals are present in the United States without having been inspected and admitted or paroled, many have accrued enough unlawful presence to trigger the 3- or 10-year unlawful presence grounds of inadmissibility when leaving the United States for immigrant visa processing abroad.[57] *See* INA section 212(a)(9)(B)(i), 8 U.S.C. 1182(a)(9)(B)(i). While there may be limited exceptions, the population affected by this rule will consist almost exclusively of individuals who are eligible for immigrant visas but are unlawfully present in the United States without having been inspected and admitted or paroled.

Before the introduction of the provisional waiver process, individuals seeking immigrant visas through consular processing were only able to apply for a waiver of a ground of inadmissibility, such as unlawful presence, *after* attending the immigrant visa interview abroad. If a consular officer identified any ground(s) of inadmissibility during an immigrant visa interview, the applicant was tentatively denied an immigrant visa and allowed to seek a waiver of any waivable ground(s) of inadmissibility. The individual could apply for such a waiver by filing Form I–601 with USCIS. Those who applied for Form I–601 waivers were required to remain abroad while USCIS adjudicated their Forms I–601, which currently takes over five months to complete.[58] If USCIS approved the waiver of the inadmissibility ground(s), DOS subsequently scheduled a follow-up consular interview. Provided there were no other concerns raised by the consular officer, DOS generally issued the immigrant visa during the follow-up consular interview.

In some instances, the Form I–601 waiver process led to lengthy separations of immigrant visa applicants from their U.S. citizen or LPR spouses, parents, and children, causing financial and emotional harm. The Form I–601 waiver process also created processing inefficiencies for both USCIS and DOS through repeated interagency communication and through multiple consular appointments or interviews.

With the goals of streamlining the inadmissibility waiver process, facilitating efficient immigrant visa issuance, and promoting family unity, DHS promulgated a rule that established an alternative inadmissibility waiver process on January 3, 2013 ("2013 Rule").[59] The 2013 Rule created a provisional waiver process for certain immediate relatives of U.S. citizens (namely, spouses, children (unmarried and under 21), and parents of U.S. citizens (provided the child is at least 21)) who are in the United States, are seeking immigrant visas, can demonstrate extreme hardship to a U.S. citizen spouse or parent, would be inadmissible upon departure from the United States due to only the accrual of unlawful presence, and meet other eligibility conditions. That process currently allows eligible individuals to apply for a provisional waiver and receive a notification of USCIS' decision on their provisional waiver application before departing for DOS consular processing of their immigrant visa applications. The provisional waiver process contrasts to the Form I–601 waiver process, which requires applicants to wait abroad, away from their family members in the United States, while USCIS adjudicates their application for a waiver of inadmissibility. Once approved for a provisional waiver, they are scheduled for the immigrant visa interview abroad. During the immigrant visa interview, a DOS consular officer will determine whether the applicant is otherwise admissible to the United States and eligible to receive an immigrant visa. Since the provisional waiver process's inception, USCIS has approved more than 66,000 provisional waiver applications for certain immediate relatives of U.S. citizens,[60] allowing these individuals and their families to enjoy the benefits of such waivers.

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[57] Individuals who depart the United States after accruing more than 180 days, but less than 1 year, of unlawful presence are generally inadmissible for 3 years. Those who depart the United States after accruing 1 year or more of unlawful presence are generally inadmissible for 10 years.

[58] U.S. Citizenship and Immigration Services. "USCIS Processing Time Information for the Nebraska Service Center- Form I–601." *Available at https://egov.uscis.gov/cris/processTimesDisplayInit.do* (last updated Feb. 11, 2016).

[59] *See* 78 FR 536 (Jan. 3, 2013).

3. Purpose of Rule

To assess the initial effectiveness of the provisional waiver process, DHS decided to offer this process to a limited group—certain immediate relatives of U.S. citizens—in the 2013 Rule.[61] Based on the lengthy separation periods and related financial and emotional burdens to families associated with the Form I–601 waiver process, and based on the efficiencies realized for both USCIS and DOS through the provisional waiver process, the Secretary directed USCIS to expand eligibility for the provisional waiver process beyond certain immediate relatives of U.S. citizens to all statutorily eligible immigrant visa applicants.[62] Consistent with that directive and the INA, on July 22, 2015, DHS published the 2015 Proposed Rule, which proposed to expand eligibility for provisional waivers of certain grounds of inadmissibility based on the accrual of unlawful presence to include all other individuals seeking an immigrant visa (all other immigrant visa applicants[63]) who are statutorily eligible for a waiver of such grounds, are seeking a waiver in connection with an immigrant visa application, are present in the United States, and meet other conditions.[64] In the 2015 Proposed Rule, USCIS also proposed to allow LPR spouses and parents, in addition to currently eligible U.S. citizen spouses and parents, to serve as qualifying relatives for the provisional waiver's extreme hardship determination, consistent with the statutory waiver authority. Under this provision, provisional waiver applicants could show that their denial of admission would cause extreme hardship to their U.S. citizen *or* LPR spouses or parents.

This final rule adopts most of the regulatory amendments set forth in the 2015 Proposed Rule except for a few provisions. In particular, USCIS, in response to public comments on the 2015 Proposed Rule, will eliminate the current provisional waiver provisions addressing ineligibility for: (1) Reason to believe that the applicant may be inadmissible on grounds other than unlawful presence at the time of the DOS immigrant visa interview (8 CFR 212.7(e)(4)(i)); (2) DOS initially acting before January 3, 2013 (for certain immediate relatives) or before the effective date of this final rule to schedule an applicant's immigrant visa interview (proposed 8 CFR 212.7(e)(4)(iv) and 212.7(e)(5)(ii)(G)); and (3) applicants who are subject to an administratively final order of exclusion, deportation, or removal (8 CFR 212.7(e)(4)(vi)).[65] An individual subject to a final order may now seek a provisional waiver, but only if he or she has already requested and been approved for consent to reapply for admission under INA section 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii) via a Form I–212 application. Filing and receiving approval of the Form I–212 application is a requirement already in place for these individuals to be eligible for an immigrant visa.

Other than the changes outlined in this rulemaking, DHS will maintain all other eligibility requirements for the provisional waiver as currently described in 8 CFR 212.7(e), including the requirements to submit biometrics, pay the provisional waiver filing fee and the biometric services fee, and be present in the United States at the time of the provisional waiver application filing and biometrics appointment.

This rule's amendments will provide more individuals seeking immigrant visas and their U.S. citizen or LPR family members with the provisional waiver's main benefit of shortened family separation periods, while increasing USCIS and DOS efficiencies by streamlining the immigrant visa process for such applicants.

4. Current Provisional Waiver Process

In this analysis, DHS draws on applicable DOS visa ineligibility statistics and historical provisional waiver application data to estimate the current demand for provisional waivers and the anticipated demand directly resulting from this final rule. Illustrating the past demand for provisional waivers, Table 2 displays the actual numbers of Form I–601A receipts, approvals, and denials recorded for March of fiscal year (FY) 2013[66] through the end of FY 2015. Across those years, DHS received about 107,000 Form I–601A applications, for an average of almost 42,000 per year.[67] During the same period, DHS approved 66,000 Form I–601A applications and denied 27,000.[68]

Of the provisional waiver applications adjudicated from FY 2013 to FY 2015, USCIS denied a total of 9 percent for the following reasons: An applicant's lack of a qualifying relative for the waiver's extreme hardship determination (0.8 percent);[69] reason to believe an applicant would be inadmissible based on grounds other than unlawful presence at the time of the immigrant visa interview (7.2 percent); DOS initially acting before January 3, 2013 to schedule an applicant's immigrant visa interview (0.1 percent); and an applicant being subject to a final order

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[60] This figure is based on Form I–601A approvals data through the end of fiscal year 2015 (September 30, 2015). Note that USCIS began accepting provisional waiver applications on March 4, 2013. Source: USCIS' Office of Performance and Quality.

[61] *See* 78 FR at 542.

[62] This expansion included, but was not limited to, adult sons and daughters of U.S. citizens; brothers and sisters of U.S. citizens; and spouses and children of LPRs. *See* Memorandum from Jeh Charles Johnson, Secretary, DHS, to Léon Rodríguez, Director, USCIS, Expansion of the Provisional Waiver Program (Nov. 20, 2014). *Available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_i601a_waiver.pdf.*

[63] For the purposes of this analysis, the phrase "all other immigrant visa applicants" encompasses the following immigrant visa categories: family-sponsored immigrants, employment-based immigrants, diversity immigrants, and certain special immigrants.

[64] *See* 80 FR 43338 (July 22, 2015).

[65] As mentioned earlier in this preamble, USCIS will automatically revoke a provisional waiver if DOS determines, at the time of the immigrant visa interview, that the applicant is inadmissible on any ground(s) of inadmissibility other than unlawful presence under INA section 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B). Revocation of the provisional unlawful presence waiver for this reason does not prevent an individual from applying under 8 CFR 212.7(a) for a waiver of inadmissibility under INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v), or for any other waiver that may be available for any other ground(s) of inadmissibility.

[66] FY 2013 was October 1, 2012 to September 30, 2013.

[67] DHS calculated the average Form I–601A receipts per month since the provisional waiver process's implementation in March 2013 through the end of FY 2015, which equaled 3,467.65, and multiplied the average monthly receipts by 12 to determine the annual average.

[68] Approvals and denials reflect actual cases adjudicated, which do not directly correspond to filing receipts for the same year.

[69] Note that applicants denied for not having a qualifying U.S. citizen spouse or parent include those who could potentially have LPR spouses and/or parents who might experience extreme hardship as well as those who attempted to demonstrate hardship to a U.S. citizen child–a relative who is not a qualifying relative for the purposes of the unlawful presence waiver, provisional or not. The exact number of denials according to these different demonstrations is unknown. Source: Email correspondence with USCIS' National Benefits Center on November 24, 2015.

(0.9 percent).[70] With this final rule's elimination or modification of these ineligibility grounds, more individuals will presumably be eligible for provisional waivers.

The actual Form I–601A filing demands illustrated in Table 2 differ from the estimates in the 2013 Rule's economic impact analysis. When DHS conducted the 2013 Rule's economic impact analysis, DHS did not have statistics on unlawful presence inadmissibility findings for certain immediate relatives that would have allowed for a precise calculation of the rule's impact. Due to these limitations, DHS instead estimated the rule's impact based on various demand scenarios. In the analysis for this final rule, DHS uses actual USCIS receipts for provisional waiver applications to determine the future demand for provisional waivers, as discussed later.

TABLE 2—HISTORICAL NUMBERS OF FORM I–601A RECEIPTS, APPROVALS, AND DENIALS

Fiscal year	Month	Receipts	Approvals	Denials
2013	Mar.	1,306	0	0
	Apr.	2,737	5	2
	May	3,267	52	14
	Jun.	3,119	226	238
	Jul.	3,425	1,006	603
	Aug.	3,075	1,435	790
	Sep.	2,798	1,749	438
FY 2013 Total		19,727	4,473	2,085
2014	Oct.	2,886	1,465	602
	Nov.	2,697	1,456	562
	Dec.	2,641	1,708	532
	Jan.	2,256	1,616	780
	Feb.	2,483	1,282	579
	Mar.	2,990	1,216	987
	Apr.	3,266	1,363	996
	May	3,650	2,052	708
	Jun.	4,184	3,151	1,100
	Jul.	3,778	4,211	1,460
	Aug.	3,907	3,912	1,801
	Sep.	4,237	4,075	1,484
FY 2014 Total		38,975	27,507	11,591
2015	Oct.	4,540	4,196	1,469
	Nov.	3,728	2,167	951
	Dec.	4,103	2,838	1,180
	Jan.	3,370	3,011	1,433
	Feb.	3,402	2,986	1,381
	Mar.	4,588	2,024	960
	Apr.	4,176	2,966	1,138
	May	4,030	2,708	934
	Jun.	4,364	2,883	1,139
	Jul.	4,162	2,712	946
	Aug.	4,019	2,939	805
	Sep.	4,313	2,880	733
FY 2015 Total		48,795	34,310	13,069
FY 2013–FY 2015 Total		107,497	66,290	26,745
FY 2013–FY 2015 Annual Average[71].		*41,612*	*25,661*	*10,353*

Note: Approvals and denials reflect actual cases adjudicated, which do not directly correspond to filing receipts for the month.
Source: USCIS' Office of Performance and Quality.

Table 3 shows DOS's historical findings of immigrant visa ineligibility due to only unlawful presence inadmissibility grounds, which DOS revised for FY 2010 through FY 2014 following the 2015 Proposed Rule's publication.[72] Between FY 2010 and FY 2015, DOS recorded ineligibility due to only unlawful presence for almost 118,000 immediate relative visas and 24,000 all other immigrant visas.[73]

Table 4 shows DOS's historical findings of immigrant visa ineligibility due to unlawful presence and any other inadmissibility ground barring visa eligibility.[74] DHS uses this population in part to estimate the number of immediate relatives who will become eligible for provisional waivers through this final rule's elimination or modification of certain provisional waiver ineligibilities currently in place.

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[70] Source: Email correspondence with USCIS' National Benefits Center on October 7, 2015 and December 7, 2015.

[71] To determine these annual averages, DHS calculated the average Form I–601A receipts, approvals, and denials per month since implementation of the provisional unlawful presence waiver process in March 2013 through the end of FY 2015 and multiplied those averages by 12. The average monthly receipts equaled 3,467.65, while approvals measured 2,138.39 and denials equaled 862.74.

[72] DOS determined that the rules it used to collect the inadmissibility and ineligibility data included in the 2015 Proposed Rule resulted in errors. DOS has since revised its rules to correct the errors.

[73] Of the ineligibility figures recorded for the "all other immigrants" visa category, nearly 97 percent correspond to family-sponsored immigrant visa applications (which does not include applications filed by immediate relatives of U.S. citizens), 2 percent correspond to employment-based immigrant visa applications, 1 percent correspond to Diversity Visa immigrant applications, and a fraction of 1 percent correspond to certain special immigrant visa applications.

[74] Other inadmissibility grounds barring visa eligibility can be found in INA section 212(a), 8 U.S.C. 1182(a).

TABLE 3—NUMBER OF IMMIGRANT VISA INELIGIBILITY FINDINGS DUE TO ONLY UNLAWFUL PRESENCE

Fiscal year	Visa category type		Total
	Immediate relatives [75]	All Other immigrants [76]	
2010	15,870	2,739	18,609
2011	18,569	5,043	23,612
2012	19,989	5,100	25,089
2013	10,136	4,126	14,262
2014	18,201	3,406	21,607
2015	34,801	3,522	38,323
Total	117,566	23,936	141,502
FY 2013–FY 2015 Annual Average	*21,046*	*3,685*	*24,731*

Source: Email correspondence with the U.S. Department of State's Bureau of Consular Affairs on December 2, 2015.

Population generally addressed in the 2013 Rule (certain immediate relatives of U.S. citizens).

Population impacted by this rule, excluding immediate relatives.

TABLE 4—NUMBER OF IMMIGRANT VISA INELIGIBILITY FINDINGS DUE TO UNLAWFUL PRESENCE AND ANY OTHER GROUND OF INADMISSIBILITY (OR VISA INELIGIBILITY)

Fiscal year	Visa category type		Total
	Immediate relatives	All other immigrants	
2010	4,655	984	5,639
2011	4,679	1,768	6,447
2012	5,436	1,763	7,199
2013	3,891	1,471	5,362
2014	3,298	1,113	4,411
2015	4,323	1,087	5,410
Total	26,282	8,186	34,468
FY 2013–FY 2015 Annual Average	*3,837*	*1,224*	*5,061*

Source: Email correspondence with the U.S. Department of State's Bureau of Consular Affairs on December 2, 2015.

In the 2015 Proposed Rule, DHS based the demand for Form I–601A applications with and without the rule on the FY 2013 to FY 2014 average ratio of Form I–601A receipts to immigrant visa ineligibility findings based on unlawful presence inadmissibility grounds. Since the publication of the proposed rule, DOS provided DHS with revised data. Based on a review of the revised DOS ineligibility data, DHS has determined that using a year-specific ratio of receipts to ineligibility findings is no longer the best option to predict future provisional waiver demand because of recent changes in Form I–601A filing trends. DOS's new data suggests that the majority of immediate relatives found ineligible for an immigrant visa by DOS based on unlawful presence inadmissibility grounds in one fiscal year have filed provisional unlawful presence waivers of inadmissibility prior to DOS's immigrant visa ineligibility finding, though the dates of these separate events is unknown. Because the time lag between such filings and ineligibility findings is unknown, making same-year comparisons between these data could result in erroneous conclusions. As such, DHS believes it is most appropriate to estimate the future demand for provisional waivers in the absence of this rule using historical Form I–601A filing data.

In the absence of this rule, DHS projects that Form I–601A receipts from immediate relative immigrants would increase from their three-year average of 41,612 (*see* Table 2) by 2.5 percent per year based on the compound annual growth rate of the unauthorized immigrant population living in the United States between 2000 and 2012.[77] Under this method, USCIS would receive a projected 478,000 provisional waiver applications across 10 years of analysis in the absence of this rule, as shown in Table 5.

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[75] Population generally addressed in the 2013 Rule (certain immediate relavies of U.S. citizens).

[76] Population Impacted by this rule, excluding immediate relatives.

[77] Calculated by comparing the estimated unauthorized immigrant population living in the United States in 2000 (8,500,000) to the estimated unauthorized immigrant population living in the United States in 2012 (11,400,000). In recent years, the estimated unauthorized immigrant population has decreased. DHS uses the historical growth rate in the unauthorized immigrant population from 2000 to 2012 because it most likely reflects the population impacted by this rule. This population includes those who have likely been unlawfully present in the United States for an extended period and who have already started the immigrant visa process by having an approved petition. Source: U.S. Department of Homeland Security, Office of Immigration Statistics. *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012,* Figure 1, Unauthorized Immigrant Population: 2000–2012, Mar. 2013. *Available at http://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf.*

TABLE 5—PROJECTED NUMBER OF IMMEDIATE RELATIVE FORM I–601A APPLICATIONS IN THE ABSENCE OF RULE (POPULATION ADDRESSED IN 2013 RULE)

Fiscal year	Form I–601A Receipts—Immediate Relatives[78]
Year 1	42,652
Year 2	43,719
Year 3	44,812
Year 4	45,932
Year 5	47,080
Year 6	48,257
Year 7	49,464
Year 8	50,700
Year 9	51,968
Year 10	53,267
Total	477,851

Notes: The yearly estimates in this table were originally calculated using unrounded figures. Thereafter, all yearly estimates were simultaneously rounded for tabular presentation.

5. Population Affected by Rule

DHS does not believe this rule will induce any new demand above the status quo for filing petitions or immigrant visa applications for this expanded group of individuals. DHS bases this assumption on the fact that most of the newly eligible visa categories to which this rule will now apply (namely, family-sponsored, employment-based, diversity, and certain special immigrant visa categories) are generally subject, unlike the immediate relative category, to statutory visa issuance limits and lengthy visa availability waits due to oversubscription.[79] Even with this rule's elimination or modification of specific provisional waiver ineligibility criteria currently in place, DHS does not anticipate that a related rise in the demand for immigrant visas for immediate relatives of U.S. citizens will occur given the low historical share of applications denied for these reasons (approximately 9 percent as mentioned earlier). In addition, because immediate relative visas are readily available, immediate relatives who were denied a provisional waiver previously have likely continued on with the consular interview process to obtain LPR status.[80] Therefore, DHS did not estimate that these immediate relatives would reapply for a provisional waiver. Furthermore, there is no evidence that the Secretary's November 2014 memorandum[81] on the expansion of the provisional waiver process spurred a significant increase in filings of the Petition for Alien Relative (Form I–130) or Immigrant Petition for Alien Worker (Form I–140).[82] Thus, DHS does not expect that this rule will increase the demand for the immigrant visa categories to which it applies.

With this rule's implementation, the number of provisional waiver applications is expected to increase from the figures listed in Table 5 as the provisional waiver eligibility criteria expands. This rule's broadened group of qualifying relatives for the provisional waiver's extreme hardship determination as well as its elimination or modification of current provisional waiver ineligibility provisions will allow some immediate relatives of U.S. citizens and LPRs to become eligible for provisional waivers. All other immigrant visa applicants[83] who are present in the United States and who otherwise meet the requirements of the provisional waiver process described in this final rule will also become eligible for provisional waivers.

Immediate Relatives Affected by Rule

Some immediate relatives of U.S. citizens were denied provisional waivers under the 2013 Rule because USCIS had "reason to believe" that they were subject to a ground of inadmissibility other than unlawful presence. Others were denied because they were subject to a final order. This rule eliminates denials based on the reason-to-believe standard and modifies the ineligibility criteria related to final orders, thus allowing additional immediate relatives to become eligible for provisional waivers. As previously mentioned, Table 4 shows DOS's historical findings of immigrant visa ineligibility among immediate relatives due to unlawful presence and any other ground for denying visa issuance, such as being subject to a final order.[84] DHS believes that the population of immediate relatives found ineligible for immigrant visas based on unlawful presence and any other ground of inadmissibility shown in Table 4 best predicts the share of immediate relatives affected by the elimination or modification of ineligibility criteria in this rule, as the DOS figures presumably account for these provisional waiver ineligibilities.[85] According to the FY 2013 to FY 2015 annual average number of immediate relatives found ineligible for visas based on unlawful presence and any other ground of inadmissibility (and visa ineligibility) (3,837; *see* Table 4), and the historical 2.5 percent growth in the unauthorized immigrant population, DHS estimates that 3,933 immediate relatives will become eligible, and consequently apply, for provisional waivers as a direct result of this rule's expanded waiver eligibility during the rule's first year of implementation (*see* Table 6).

Table 6 shows that over a 10-year period of analysis, USCIS will receive approximately 44,000 provisional waiver applications from immediate relatives now eligible for provisional waivers based on this rule's elimination or modification of specific provisional waiver ineligibility criteria. These figures reflect the assumption that the population of individuals historically found ineligible for immigrant visas based on unlawful presence and any other ground of inadmissibility will apply for provisional waivers even though they may still be inadmissible on another ground that would bar them from receiving an immigrant visa. However, these figures do not account for immediate relatives of U.S. citizens and LPRs who could become eligible for provisional waivers through this rule's broadened group of qualifying relatives for the provisional waiver's extreme hardship determination and its elimination of DOS scheduling date requirements. Due to data limitations, DHS cannot precisely measure the number of individuals impacted by these amendments, though based on historical denials, the number impacted will likely be small.[86]

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[78] Estimated number of provisional waiver applications from the eligible population of immediate relatives. These applications do not necessarily correspond to waiver approvals.

[79] Family-sponsored immigrant visa applicants, who represent nearly 97 percent of the "all other immigrants" population found ineligible due to only unlawful presence inadmissibility grounds, currently face visa oversubscription. This means that any new family-sponsored visa applicants must wait in line for available visas. Depending on the applicant's country of chargeability and preference category, this wait could be many years. Source: U.S. Department of State. "Visa Bulletin: Immigrant Numbers for December 2015," IX (87), Nov. 2015. *Available at http://travel.state.gov/content/dam/visas/Bulletins/visabulletin_December2015.pdf.*

[80] Immigrant visas for immediate relatives of U.S. citizens are unlimited, so they are always available. *See* INA section 201(b)(2)(A)(i), 8 U.S.C. 1151(b)(2)(A)(i). This means that immediate relatives do not have to wait in line for a visa number to become available for them to immigrate. Sources: U.S. Citizenship and Immigration Services. "Visa Availability and Priority Dates." *Available at http://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates* (last reviewed/updated Nov. 5, 2015).

[81] *See* Memorandum from Jeh Charles Johnson, Secretary, DHS, to Léon Rodríguez, Director, USCIS, Expansion of the Provisional Waiver Program (Nov. 20, 2014). *Available at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_i601a_waiver.pdf.*

[82] Based on a DHS comparison of Form I–130 and Form I–140 filings during the three months immediately following the Secretary's 2014 memorandum on the expansion of the provisional waiver program and during those same three months in FY 2013 and FY 2014.

[83] As previously mentioned, the phrase "all other immigrant visa applicants" encompasses the following immigrant visa categories: family-sponsored, employment-based, Diversity Visa, and (certain) special immigrant visa applicants. Examples of family relationships that fall under "all other immigrant visa applicants" include, but are not limited to, adult sons and daughters of U.S. citizens, brothers and sisters of U.S. citizens, and spouses and children of LPRs.

[84] Other grounds of inadmissibility barring visa eligibility can be found in INA section 212(a), 8 U.S.C. 1182(a).

[85] These ineligibility findings likely include the previously discussed 9 percent of historical Form I–601A applicants denied for the following reasons: an applicant's lack of a qualifying relative for the waiver's extreme hardship determination; reason to believe an applicant would be inadmissible based on grounds other than unlawful presence at the time of the immigrant visa interview; DOS initially acting before January 3, 2013 to schedule an applicant's immigrant visa interview; and an applicant being subject to a final order. However, due to data limitations, DHS does not know the exact number of ineligibility findings that correspond to provisional waiver denials.

Due to additional data limitations, DHS cannot determine the exact number of immediate relatives eligible to apply for provisional waivers under the 2013 Rule who either continued taking steps necessary to obtain LPR status or who abandoned the immigrant visa process altogether after being denied provisional waivers for the ineligibility criteria eliminated or modified with this rule (*e.g.*, DOS scheduling date requirements). DHS assumes for the purpose of this analysis that those immediate relatives who applied for provisional waivers prior to this final rule but were denied for the criteria eliminated or modified with this rule have continued taking the steps necessary to obtain LPR status rather than delay their immigration process. These individuals have likely sought waivers of the unlawful presence grounds of inadmissibility through the Form I–601 waiver process as part of obtaining their LPR status. For these reasons, DHS does not believe this rule will affect certain immediate relatives of U.S. citizens previously denied provisional waivers due to this rule's eliminated or modified criteria, and thus does not consider these individuals in the population affected by this rule. As such, Table 6 does not include these individuals.

TABLE 6—PROJECTED NUMBER OF IMMEDIATE RELATIVE FORM I–601A APPLICATIONS RESULTING FROM RULE

Fiscal year	Form I–601A Receipts—immediate relatives newly eligible for provisional waiver under rule[87]
Year 1	3,933
Year 2	4,031
Year 3	4,132
Year 4	4,235
Year 5	4,341
Year 6	4,450
Year 7	4,561
Year 8	4,675
Year 9	4,792
Year 10	4,912
Total	44,062

Notes: The yearly estimates in this table were originally calculated using unrounded figures. Thereafter, all yearly estimates were simultaneously rounded for tabular presentation.

All Other Immigrants Affected by Rule

In addition to the population of immediate relatives illustrated in Table 6, this rule will affect a portion of all other immigrant visa applicants. To capture the population of all other immigrant visa applicants (that is, those who are not immediate relative immigrant visa applicants) that may file for a provisional waiver due to this rule, DHS uses the following historical data: (1) DOS immigrant visa ineligibility findings due to only unlawful presence inadmissibility grounds (the population included in the 2015 Proposed Rule); (2) DOS immigrant visa ineligibility findings due to unlawful presence and any other inadmissibility ground (the population potentially now included in this final rule); and (3) growth in the unauthorized immigrant population. In particular, DHS applies the previously discussed 2.5 percent compound annual growth rate of unauthorized immigrants from 2000 to 2012 to the sum of the FY 2013 to FY 2015 annual averages of all other immigrant visa ineligibility findings due to: (1) Only unlawful presence inadmissibility grounds; and (2) unlawful presence and any other inadmissibility ground, which equals 4,909 (*see* Table 3 and Table 4).[88] For Year 1, DHS projects that Form I–601A applications from the population of all other immigrants now eligible for provisional waivers will measure approximately 5,032. For Years 2 through 10, applications are expected to range from 5,158 to 6,284 (*see* Table 7).[89] These figures partly reflect the assumption that the population of individuals historically found ineligible for immigrant visas based on unlawful presence and any other ground of inadmissibility will apply for provisional waivers even though they may still be inadmissible on another ground that would bar them from receiving an immigrant visa.

TABLE 7—PROJECTED NUMBER OF ALL OTHER IMMIGRANT FORM I–601A APPLICATIONS RESULTING FROM RULE

Fiscal year	Form I–601A receipts—all other immigrants[90]
Year 1	5,032
Year 2	5,158
Year 3	5,286
Year 4	5,419
Year 5	5,554
Year 6	5,693
Year 7	5,835
Year 8	5,981
Year 9	6,131
Year 10	6,284
Total	56,373

Notes: The yearly estimates in this table were originally calculated using unrounded figures. Thereafter, all yearly estimates were simultaneously rounded for tabular presentation.

Total Population Affected by Rule

Table 8 outlines the entire population of immigrant visa applicants potentially impacted by this rule, as measured by the sum of Form I–601A receipts listed in Table 6 and Table 7. Across a 10-year period of analysis, DHS estimates that the provisional waiver applications from this rule's expanded population of individuals (including immediate relatives of U.S. citizens and LPRs, and family-sponsored, employment-based, Diversity Visa, and (certain) special immigrant visa applicants) will be nearly 100,000. These provisional waiver applications may ultimately result in waiver approvals or denials. Note that Table 8 presents only the additional Form I–601A filings that will occur as a result of this rule; it does not account for the provisional waiver applications that DHS anticipates will be filed in the absence of this rule by currently eligible certain immediate relatives of U.S. citizens (*see* Table 5). As stated earlier, the figures in Table 8 may underestimate the total Form I–601A applications resulting from this rule because they do not account for immediate relatives of U.S. citizens and LPRs who could become eligible for provisional waivers through this rule's broadened group of qualifying relatives for the provisional waiver's extreme hardship determination and its elimination of DOS scheduling date requirements. They could also overestimate the total Form I–601A applications resulting from this rule because they are partly based on the assumption that the population of individuals historically found ineligible for immigrant visas based on unlawful presence and any other ground of inadmissibility will apply for provisional waivers even though they may still be inadmissible on another ground that would bar them from receiving an immigrant visa.

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[86] Of the provisional waiver applications adjudicated from FY 2013 to FY 2015, USCIS denied less than 1,000 applications in total based on an applicant's lack of a qualifying relative for the waiver's extreme hardship determination and for DOS initially acting before January 3, 2013 to schedule an applicant's immigrant visa interview. Source: Email correspondence with USCIS' National Benefits Center on October 7, 2015 and December 7, 2015.

[87] Estimated number of provisional waiver applications from the population of immediate relatives inadmissible due to unlawful presence and any other immigrant visa inadmissibility ground. These applications do not necessarily correspond to waiver approvals.

[88] Calculated as the FY 2013–FY 2015 average number of all other immigrant visa ineligibility findings due to only unlawful presence (3,685) plus the FY 2013–FY 2015 average number of all other immigrant visa ineligibility findings due to unlawful presence and any other ground of inadmissibility (1,224) = 4,909.

[89] Year 1 figure calculated as the FY 2013–FY 2015 average number of all other immigrant visa ineligibility findings due to: (1) Only unlawful presence, and (2) unlawful presence and any other ground of inadmissibility of 4,909 multiplied by the assumed 2.5 percent growth rate (that is, 1.025), which equals 5,032.

[90] Estimated number of provisional waiver applications from the population of all other immigrants ineligible due to: (1) Only unlawful presence; and (2) unlawful presence and any other ground of inadmissibility. These applications do not necessarily correspond to waiver approvals.

TABLE 8—TOTAL FORM I–601A APPLICATIONS RESULTING FROM RULE

Fiscal year	Form I–601A receipts
Year 1	8,965
Year 2	9,189
Year 3	9,418
Year 4	9,654
Year 5	9,895
Year 6	10,143
Year 7	10,396
Year 8	10,656
Year 9	10,923
Year 10	11,196
Total	100,435

Notes: The yearly estimates in this table were originally calculated using unrounded figures. Thereafter, all yearly estimates were simultaneously rounded for tabular presentation.

All public comments about specific elements of the projections, costs, or benefits of the rule are discussed earlier in the preamble.

6. Costs and Benefits

Costs

Individuals who are newly eligible to apply for a provisional waiver strictly under this rule will bear the costs of this regulation. Although the waiver expansion may require the Federal Government (namely, DHS and USCIS) to expend additional resources on related adjudication personnel, equipment (*e.g.,* computers and telephones), and occupancy demands, DHS expects these costs to be offset by the additional fee revenue collected from the Form I–601A filing fee and the biometric services fee. Currently, the filing fees for Form I–601A and biometric services are $585 and $85, respectively.[91] Accordingly, DHS does not believe this rule will impose additional net costs on the Federal Government.

With the exception of applicants subject to final orders,[92] eligible individuals must generally first complete Form I–601A and submit it to USCIS with its current $585 filing fee and $85 biometric services fee to receive a provisional waiver under this rule. DHS estimates the time burden of completing Form I–601A to be 1.5 hours, which translates to a time, or opportunity, cost of $15.89 per application.[93] DHS calculates the Form I–601A application's opportunity cost to individuals by first multiplying the current Federal minimum wage of $7.25 per hour by 1.46 to account for the full cost of employee benefits (such as paid leave, insurance, and retirement), which results in a time value of $10.59 per hour.[94] Then, DHS multiplies the $10.59 hourly time value by the current 1.5-hour Form I–601A completion time burden to determine the opportunity cost for individuals to complete Form I–601A ($15.89). DHS recognizes that the individuals impacted by the rule are generally unlawfully present and not eligible to work; however, consistent with other DHS rulemakings, DHS uses wage rates as a mechanism to estimate the opportunity costs to individuals associated with completing this rule's required application and biometrics collection. The cost for applicants to initially file Form I–601A, including only the $585 filing fee and opportunity cost, equals $600.89.

After USCIS receives an applicant's completed Form I–601A and its filing and biometric services fees, the agency sends the applicant a notice scheduling him or her to visit a USCIS Application Support Center (ASC) for biometrics collection. Along with an $85 biometric services fee, the applicant will incur the following costs to comply with the provisional waiver's biometrics submission requirement: (1) The opportunity cost of traveling to an ASC, (2) the opportunity cost of submitting his or her biometrics, and (3) the mileage cost of traveling to an ASC. While travel times and distances to an ASC vary, DHS estimates that an applicant's average roundtrip distance to an ASC is 50 miles, and that the average time for that trip is 2.5 hours. DHS estimates that an applicant waits an average of 1.17 hours for service and to have his or her biometrics collected at an ASC, adding up to a total biometrics-related time burden of 3.67 hours.[95] By applying the $10.59 hourly time value for individuals to the total biometrics-related time burden of 3.67 hours, DHS finds that the opportunity cost for a provisional waiver applicant to travel to and from an ASC, and to submit biometrics, will total $38.87.[96] In addition to the opportunity cost of providing biometrics, provisional waiver applicants will experience travel costs related to biometrics collection. The cost of such travel will equal $28.75 per trip, based on the assumed 50-mile roundtrip distance to an ASC and the General Services Administration's travel rate of $0.575 per mile.[97] DHS assumes that each applicant will travel independently to an ASC to submit his or her biometrics, meaning that this rule will impose a time cost on each provisional waiver applicant. Adding the fee, opportunity, and travel costs of biometrics collection together, DHS estimates that the provisional waiver's requirement to submit biometrics will cost a total of $152.62 per Form I–601A filing.

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[91] Source of fee rates: U.S. Citizenship and Immigration Services. "I–601A, Application for Provisional Unlawful Presence Waiver." *Available at http://www.uscis.gov/i-601a* (last reviewed/updated Oct. 7, 2015). The Form I–601A filing fee and biometric services fee are subject to change through the normal fee review cycle and any subsequent rulemaking issued by USCIS/DHS. USCIS/DHS will consider the impact of the provisional waiver and biometrics process workflows and resource requirements as a normal part of its biennial fee review. The biennial fee review determines if fees for immigration benefits are sufficient in light of resource needs and filing trends. *See* INA section 286(m), 8 U.S.C. 1356(m).

[92] As previously stated, individuals subject to a final order may now seek a provisional waiver only if they also request (and are approved for) consent to reapply for admission under INA section 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii) via an Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I–212). Filing and receiving approval for a Form I–212 is a requirement already in place for individuals subject to inadmissibility under INA section 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A), to be eligible for an immigrant visa. Thus, USCIS does not include the cost to file Form I–212 to the applicable population of provisional waiver applicants in this rule.

[93] *See* 80 FR 16688 (Mar. 30, 2015) for the estimated Form I–601A completion time burden.

[94] Federal minimum wage information source: U.S. Department of Labor, Wage and Hour Division. "Wages- Minimum Wage." *Available at http://www.dol.gov/dol/topic/wages/minimumwage.htm* (last accessed Dec. 7, 2015). Employer benefits adjustment information source: U.S. Department of Labor, Bureau of Labor Statistics. "Economic News Release: Employer Costs for Employee Compensation- September 2015, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, September 2015- All Workers." Dec. 9, 2015. *Available at http://www.bls.gov/schedule/archives/ecec_nr.htm#current.*

[95] *See* 80 FR 16688 (Mar. 30, 2015) for Form I–601A biometrics collection time burden.

[96] 3.67 hours multiplied by $10.59 per hour equals $38.87.

Accounting for all of the fee, time, and travel costs to comply with the provisional waiver requirements, DHS finds that each Form I–601A filing will cost an applicant $753.51. Table 9 shows that the overall cost of this rule to the expanded population of provisional waiver applicants will measure $75.7 million (undiscounted) over the 10-year period of analysis. DHS calculates this rule's total cost to applicants by multiplying the individual cost of completing the provisional waiver application requirements ($753.51) by the number of newly eligible individuals projected to apply for provisional waivers each year following the implementation of this rule (*see* Table 8). In present value terms, this rule will cost newly eligible waiver applicants $52.4 million to $64.2 million across a 10-year period at 7 percent and 3 percent discount rates, respectively (*see* Table 9). Because this rule will not generate any net costs to the Federal Government (as discussed previously), these costs to applicants also reflect the total cost of this rule. Depending on the population of individuals who apply for provisional waivers beyond the projections shown in Table 8, the costs of this rule may be over- or underestimated.

TABLE 9—TOTAL COST OF RULE TO APPLICANTS/TOTAL COST OF RULE

Fiscal year	Total waiver cost to applicants/ total cost of rule
Year 1	$6,755,217
Year 2	6,924,003
Year 3	7,096,557
Year 4	7,274,386
Year 5	7,455,981
Year 6	7,642,852
Year 7	7,833,490
Year 8	8,029,403
Year 9	8,230,590
Year 10	8,436,298
10-Year Total: Undiscounted	75,678,777
10-Year Total: Present Value, Discounted at 3 percent	64,168,205
10-Year Total: Present Value, Discounted at 7 percent	52,429,216

Notes: Estimates may not sum to total due to rounding. The cost estimates in this table are contingent upon Form I–601A filing (or receipt) projections as well as the discount rates applied.

Benefits

The benefits of this rule are largely the result of streamlining the immigrant visa process for an expanded population of individuals who are inadmissible to the United States due to unlawful presence. This rule will provide applicants seeking provisional waivers and their family members advance notice of USCIS' decision on their provisional waiver application prior to leaving the United States for their immigrant visa interviews abroad, offering many individuals the certainty of knowing they have been provisionally approved for a waiver of certain unlawful presence grounds of inadmissibility before departing from the United States. For those newly eligible individuals who receive a provisional waiver through this rule and their U.S. citizen or LPR family members, this rule's primary benefits are its reduced separation time among family members during the immigrant visa process. Instead of attending multiple immigrant visa interviews and waiting abroad while USCIS adjudicates a waiver application as required under the Form I–601 process, the provisional waiver process allows individuals to file a provisional waiver application while in the United States and receive a notification of USCIS' decision on their provisional waiver application before departing for DOS consular processing of their immigrant visa applications. Although DHS cannot estimate with precision the exact amount of separation time families will save through this rule, DHS estimates that some newly eligible individuals and their U.S. citizen or LPR family members could experience several months of reduced separation time based on the average adjudication time for Form I–601 waiver applications.[98] In addition to the humanitarian and emotional benefits derived from reduced separation of families, DHS anticipates that the shortened periods of family separation resulting from this rule may lessen the financial burden U.S. citizens and LPRs face to support their immigrant relatives while they remain outside of the country. Because of data limitations, however, DHS cannot predict the exact financial impact of this change.

Due to the unique nature of the Diversity Visa program, individuals seeking an immigrant visa through that program and wishing to use the provisional waiver process are likely to enjoy fewer overall benefits from this rule than others. Although an individual may be selected to participate in the Diversity Visa program, he or she may not ultimately receive an immigrant visa due to visa unavailability. Under this rule, Diversity Visa selectees and their derivatives who wish to use the provisional waiver process may file a waiver application before knowing whether their immigrant visa will ultimately be available to them. For those pursuing the Diversity Visa track, the risk of completing the provisional waiver process without being issued a visa is higher compared to applicants of other immigrant visa categories filing Form I–601A.[99] If a Diversity Visa program selectee's provisional waiver is approved but he or she is not ultimately issued an immigrant visa, he or she will incur the costs but not obtain the benefits associated with a provisional waiver.

Based on USCIS and DOS efficiencies realized as a result of the current provisional waiver process, DHS believes that this rule could provide additional Federal Government efficiencies through its expansion to a larger population. As previously described in the 2013 Rule, the provisional waiver process allows USCIS to communicate to DOS the status of the waiver application prior to an applicant's immigrant visa interview abroad. Such early communication eliminates the current need to transfer cases repeatedly between USCIS and DOS when adjudicating an immigrant visa application and Form I–601.[100] Through the provisional waiver process, DOS receives advance notification from USCIS of the discretionary decision to provisionally waive certain unlawful presence inadmissibility bars, allowing for better allocation of valuable agency resources like time, storage space, and human capital.

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[97] 50 miles multiplied by $0.575 per mile equals $28.75. *See* 79 FR 78437 (Dec. 30, 2014) for the General Services Administration's mileage rate.

[98] The average adjudication time of Form I–601 waivers is currently over five months. Source: U.S. Citizenship and Immigration Services. "USCIS Processing Time Information for the Nebraska Service Center-Form I–601." *Available at https://egov.uscis.gov/cris/processTimesDisplayInit.do* (last updated Feb. 11, 2016).

[99] There is a statutory maximum of 55,000 diversity visas authorized for allocation each fiscal year, but this number is reduced by up to 5,000 visas set aside exclusively for use under the Nicaraguan and Central American Relief Act. See NACARA section 203(d), as amended. DOS regularly selects more than 50,000 entrants to proceed on to the next step for diversity visa processing to ensure that all of the 50,000 diversity visas are allotted. Source: U.S. Department of State, Office of the Spokesman. Special Briefing: Senior State Department Official on the Diversity Visa Program. May 13, 2011. *Available at http://www.state.gov/r/pa/prs/ps/2011/05/166811.htm.*

D. Executive Order 13132

This final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 Civil Justice Reform

Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DHS has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting and recordkeeping requirements inherent in a rule. *See* 44 U.S.C. 3507. This final rule requires that an applicant seeking a provisional waiver complete an *Application for Provisional Unlawful Presence Waiver,* Form I–601A, (OMB Control Number 1615–0123). This form is considered an information collection and is covered under the PRA. USCIS is currently seeking OMB approval of revisions that this final rule is causing to this information collection instrument. DHS specifically requested public comments on the proposed changes to the Application for Provisional Unlawful Presence Waiver, Form I–601A, and the form instructions in the proposed rule in accordance with 5 CFR 1320.11(a). OMB reviewed the request filed in connection with the proposed rule and also filed comments in accordance with 5 CFR 1320.11(c).

1. Comments on the Information Collection

DHS received several comments from the public directly related to the revised form and its instructions, and, in accordance with 5 CFR 1320.11(f), DHS has considered the comments, provided detailed responses to the comments on the form, and explained any modifications it has made in its submission to OMB. The comments and responses are summarized below.

a. The General Need for a Standardized Application Form

One commenter requested that USCIS adjudicate provisional waiver requests without requiring use of a specific form. The commenter believed requiring the completion of a standardized form effectively requires applicants to retain an immigration attorney, who may exploit them.

DHS has not accepted the suggestion. USCIS forms are generally designed for use by the public in a manner that standardizes the collection of necessary information and streamlines the adjudication of immigration benefits, which benefits both USCIS and applicants. Lack of a standardized information collection document, as well as the acceptance of ad hoc requests, could cause confusion and processing delays that adversely impact both USCIS and applicants. Standardized intake methods and forms help USCIS streamline processing requirements and minimize its costs, thereby moderating the fees it must charge for immigration benefit requests.

b. Form I–601A, Information About Your Immigrant Visa Petition or Your Immigrant Visa Case

DHS received several suggestions for improving the section of the form collecting information about the applicant's immigrant visa petition. Two commenters asked USCIS to include a section for applicants on Form I–601[101] to indicate the name of the employer, sponsor, or petitioner. One of those commenters requested that the form include a section for applicants to submit information about approved Immigration Petitions for Alien Worker, Forms I–140, particularly for beneficiaries under the employment-based third preference (EB–3) category.

DHS will not adopt this suggestion because it appears to be related to Form I–601 and not Form I–601A, the form used for this rule. Form I–601A already includes questions about the name of the petitioning employer or sponsor. See Part 3, Information About Your Immigrant Visa Petition and Your Immigrant Visa Case, Item Numbers 3 through 6 of Form I–601A.

Two commenters wanted to ensure that derivative spouses of principal beneficiaries are eligible for the provisional waiver. They requested that USCIS specifically ask whether the individual is filing this application based on an approved Form I–140 petition as a derivative spouse of the primary beneficiary and to provide the USCIS receipt number for the Form I–140 petition.

DHS agrees with the need to collect additional information, as suggested by the commenters, in light of this final rule's extension of eligibility for the provisional waiver to spouses and children who accompany or follow to join principal immigrants. DHS has added questions to Form I–601A about derivative spouses or children that should address the concern raised by the commenters.

c. Form I–601A, Date of Entry and Place or Port of Entry

One commenter suggested that Form I–601A applicants should be permitted to use approximate dates and places of entry when filling out the form, rather than only specific dates or places of entry. The commenter reasoned that it may be difficult for some applicants, especially those who entered at a young age or without lawful status, to specify an exact entry date or place.

Consistent with these comments, DHS has revised Part 1 of Form I–601A to permit applicants to provide approximate dates and places of entry, if necessary. Specifically, DHS added the phrase "on or about" to "Date of Entry (mm/dd/yyyy)" and "(actual or approximate)" after "Place or Port-of-Entry (City or Town)."

d. Form I–601A, and Instructions, Certain Inadmissibility and Criminal History Issues

One commenter requested that USCIS should not require Form I–601A applicants to provide all related court dispositions regarding criminal history if the disclosure of such court dispositions is prohibited by state law. The commenter was concerned that such a requirement would effectively ask applicants to violate state confidentiality laws or request records that may be impossible to obtain.

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[100] *See* 78 FR 536 (Jan. 3, 2013).

[101] Both commenters referred to Form I–601 rather than Form I–601A.

DHS did not adopt this suggestion. DHS does not believe that an individual's request for his or her own court dispositions, and the subsequent disclosure of that information to USCIS, would violate confidentiality laws. Although state confidentiality laws may make it improper for a clerk of court to release information about a case to a third party, such laws do not prohibit the subjects of those proceedings from obtaining information about themselves.[102] USCIS may request any evidence relevant to the adjudication of an immigration benefit, including court records, when needed to assess the applicant's eligibility for the benefit. USCIS often requires court records to assess an applicant's eligibility for a provisional waiver, as well as to determine whether the applicant merits the waiver as a matter of discretion.

e. Form I–601A, Statement From Applicant

A commenter suggested that USCIS add questions related to hardship that would allow officers to quickly determine whether a threshold level of extreme hardship has been demonstrated. The commenter cited the Application for Suspension of Deportation or Special Rule Cancellation of Removal, Form I–881, as an example of a form that poses specific questions related to the establishment of extreme hardship.

DHS has not accepted this suggestion. Although Form I–881 includes questions relating to potential hardship, that form—unlike the provisional waiver application (and the statutory inadmissibility waiver grounds upon which it is based)—is used solely to adjudicate relief under NACARA, and thus utilizes questions generally tracking pertinent regulations outlining hardship factors that may be considered under the NACARA program. *See* 8 CFR 240.64; 8 CFR 1240.58(b). Because similar regulations do not exist in the provisional waiver context, DHS does not believe that adding specific hardship questions to Form I–601A is appropriate. Among other things, such questions may be understood as setting the contours of the extreme hardship determination in the provisional waiver context, which may unintentionally lead applicants to restrict the types of evidence they submit to establish extreme hardship. Moreover, DHS notes that USCIS does provide, in the relevant form instructions, a list of non-exclusive factors that may be considered in making extreme hardship determinations. *See* Instructions to Form I–601 and Form I–601A.

f. Form I–601A Instructions, Criminal History Issues

One commenter suggested clarifications to the Form I–601A instructions regarding documentation of criminal history in two scenarios: those involving brief detentions and those where criminal records do not exist. First, the commenter suggested a change to the instructions to clarify that the relevant documentation requirements do not apply to an applicant unless he or she has been arrested for, or charged with, a criminal offense (*i.e.*, not individuals who were simply stopped or questioned by law enforcement authorities). Second, the commenter suggested a change to the instructions to clarify that an applicant may submit documents from a relevant court to show the lack of criminal charge or prosecution. To accomplish these two suggestions, the commenter recommended amending the instructions by inserting the following underlined text (and deleting the following text that has been struck through) in the instruction for Item Number 31: "For Item Number 31, if you were *arrested but* not charged with any crime or offense, provide a statement or other documentation from the arresting authority, or prosecutor's office, *or court, if available,* to show that you were not charged with any crime or offense."

In response to these suggestions, DHS has inserted the words "arrested but" and "or court" into the relevant instruction as suggested by the commenter. DHS agrees that the insertion of this language would provide additional clarity to applicants. DHS, however, did not add the words "if available" as suggested by the commenter, because USCIS believes it is self-evident that documents cannot be provided if they are not available. In this final rule, USCIS has provided applicants with various ways to prove the absence of a criminal conviction without necessarily specifying or limiting the types of documents USCIS will consider.

g. Form I–601A Instructions, Purpose of Form I–601A

A commenter suggested adding language to the Form I–601A instructions clarifying the categories of individuals who may be eligible to apply for provisional waivers under this rule. Specifically, the commenter suggested adding the following underlined text to ensure that certain individuals are eligible to apply for provisional waivers: "Certain immigrant visa applicants who are relatives of U.S. citizen or Lawful Permanent Residents (LPRs)*; family-sponsored immigrants; employment-based immigrants; special immigrants; and participants in the Diversity Visa Program* may use this application to request a provisional waiver of the unlawful presence grounds."

DHS has not adopted this suggestion. DHS believes the pre-existing language accurately captures those who have the requisite family relationships to apply for provisional waivers, including those who have become newly eligible to apply under this rulemaking. DHS believes the additional language suggested by the commenter could be read to imply that an applicant is not required to have the requisite relationship with a U.S. citizen or LPR in order to apply for a provisional waiver. DHS has thus not amended this portion of the Form I–601A instructions.

h. Form I–601A Instructions, Who May File

One commenter suggested that DHS add language to the Form I–601A instructions stating that individuals who are not immediate relatives and who filed more than one Form I–601A application are still eligible to file a subsequent Form I–601A application even if DOS acted, before the effective date of this rule, to schedule their first immigrant visa interview.

DHS has not adopted this suggestion. As noted previously, this final rule eliminates the regulatory provisions that make individuals ineligible for provisional waivers depending on the date on which DOS initially acted to schedule their immigrant visa interviews. Therefore, the commenter's suggested amendment is now unnecessary.

i. Form I–601A Instructions, Can I file other forms with Form I–601A?

One commenter suggested adding text to the Form I–601A instructions indicating that an applicant may request electronic notification of USCIS acceptance of the filing of Form I–601A by filing Form G–1145, E-Notification of Application/Petition Acceptance, along with Form I–601A.

DHS adopted this suggestion.

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[102] For example, California state law specifies that individuals can obtain a copy of their own case files and can subsequently disclose such records freely. *See* Cal. Welf. & Inst. Code § 827(a)(1)(C) and (5).

j. Form I–601A Instructions, General Instructions

One commenter suggested changes to the Form I–601A instructions to make it easier for individuals with a physical or developmental disability or mental impairment to request waivers. Specifically, the commenter recommended replacing the portion of the Form I–601A instructions concerning the ability of a legal guardian to sign for a mentally incompetent individual with the following: "A designated representative may sign if the requestor is unable to sign due to a physical or developmental disability or mental impairment."

DHS has not adopted this suggestion, as the Department believes that current regulations are sufficient to address the commenter's concerns. First, current regulations provide that a legal guardian may sign for an individual who is mentally incompetent. *See* 8 CFR 103.2(a)(2). Second, even if no legal guardianship has been established, applicants with disabilities have various options for affecting signatures. Under USCIS policy, a valid signature does not need to be legible or in English, and it may be abbreviated provided it is consistent with the manner in which the individual normally signs his or her name. An individual who is unable to write in any language may place an "X" or similar mark in lieu of a signature. DHS believes existing regulations already address the commenters concern and did not adopt the suggestion.

k. Form I–601A Instructions, General Instructions

One commenter requested that DHS include an example of a translation certification in the Form I–601A instructions.

DHS did not adopt this suggestion. Regulations require that any document containing foreign language submitted to USCIS must be accompanied by (1) a full English language translation that the translator has certified as complete and accurate, and (2) the translator's certification that he or she is competent to translate from the foreign language into English. *See* 8 CFR 103.2(b)(3). DHS believes the regulation is sufficiently clear, and the Department is worried that providing an example translation certification will be understood by applicants as a required form, thus effectively limiting options for obtaining translation services.

l. Form I–601A Instructions, Specific Instructions

One commenter suggested providing applicants with additional instructions to help clarify when individuals are deemed to be admitted or to have entered without inspection. Specifically, the commenter suggested that DHS replace the term "EWI" (entry without inspection) with "no lawful status" in the Form I–601A instructions and to add a note to the instructions indicating that applicants without lawful status who entered at a port of entry may have nevertheless entered pursuant to inspection and admission. The commenter, citing to the decision of the Board of Immigration Appeals at *Matter of Quilantan,* 25 I. & N. Dec. 285 (BIA 2010), stated that an individual without lawful status who is nevertheless permitted to enter the United States at a port of entry may be "admitted," even if the inspection at the port did not comply with substantive legal requirements and there is no record of the individual having been admitted in any particular status.

DHS has not adopted these suggestions. DHS believes that the form instructions are sufficiently clear for applicants to appropriately answer all relevant questions. DHS does not believe it is necessary to add reminders or warnings on the issue raised by the commenter, as DHS does not believe that an applicant will erroneously state that he or she is present without admission or parole.

m. Form I–601A Instructions, Immigration or Criminal History

One commenter requested that the Form I–601A instructions be amended to provide information about grants of voluntary departure and how such grants affect the provisional waiver process. Specifically, the commenter requested that the instructions include a provision specifying that an immigration judge may grant voluntary departure, or dismiss or terminate removal proceedings, prior to the applicant leaving the United States for immigrant visa processing.

DHS has not adopted this suggestion, as an individual granted voluntary departure is not eligible for a provisional waiver. USCIS, however, modified Form I–601A by including a question asking whether the applicant has been granted voluntary departure. USCIS also made corresponding amendments in the form instructions.

n. Form I–601A Instructions, Penalties

One commenter asserted that USCIS established an overly broad standard for denying Form I–601A applications, as well as other immigration benefits, due to the submission of false documents with such applications. To address this concern, the commenter suggested that the Form I–601A instructions be amended to indicate that applications will be denied only if the applicants submit "materially" false documents.

DHS has not adopted the commenter's suggestion, as there are existing statutory requirements regarding the use of false documents. DHS, however, has modified the relevant language in the form instructions to more closely match the language of 8 U.S.C. 1324c and 18 U.S.C. 1001(a), which relate to civil and criminal penalties for the use of false documents to defraud the U.S. Government or obtain an immigration benefit. The new language reads, "If you knowingly and willfully falsify or conceal a material fact or submit a false, altered, forged, or counterfeited writing or document with your Form I–601A, we will deny your Form I–601A and may deny any other immigration benefit."

2. Changes to the Information Collection (OMB Control No. 1615–0123)

DHS has revised the Form I–601A as indicated in the preceding responses. The revised form and instructions are available for review at *http://www.reginfo.gov/public/do/PRAMain* under OMB control number 1615–0123, or at *https://www.regulations.gov/#!home* in docket USCIS–2012–0003.

As a result of the final rule's elimination or modification of certain provisional waiver eligibility criteria, and a result of newer and better data and historical source data revisions,[103] DHS has updated the supporting statement for the Form I–601A. The update reflects changes in the respondent estimates that USCIS projected in the 2015 Proposed Rule. In the 2015 Proposed Rule, DHS estimated that approximately 10,258 new respondents would file applications for provisional waivers because of the changes proposed by the rule. DHS also estimated that 42,707 individuals currently eligible for provisional waivers would file Form I–601 applications in the future. DHS has revised these estimates, projecting that approximately 9,191 new respondents will file applications for provisional waivers because of the changes in this final rule and 43,728 individuals currently eligible for provisional waivers will file Form I–601 applications in the future. With these changes in the number of Form I–601A applications, the estimate for the total number of respondents has been updated from 52,965 to 52,918, which represents a decrease of 47 respondents. The current burden hour inventory approved for this form is 141,417 hours, and the requested new total hour burden is 141,292 hours. This revision reflects an increase (47,841 annual burden hours) in the annual burden hours previously reported for this information collection.

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[103] DOS determined that its rules used to collect the inadmissibility data included in the 2015 Proposed Rule resulted in errors. DOS has since revised its rules to correct the errors.

Overview of this information collection (OMB Control Number 1615–0123):

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Provisional Unlawful Presence Waiver.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring, the collection:* I–601A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households: Individuals who are: (a) Immigrant visa applicants, including (1) immediate relatives, (2) individuals seeking to immigrate under a family-sponsored, employment-based, or special immigrant visa category, or (3) Diversity Visa selectees and derivatives; and (b) applying from within the United States for a provisional waiver under INA section 212(a)(9)(B)(v), 8 U.S.C. 1182(a)(9)(B)(v), before obtaining an immigrant visa abroad.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–601A is 52,918 and the estimated hour burden per response is 1.5 hours; and 52,918 respondents providing biometrics at 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 141,292 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,496,282.

G. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

DHS has reviewed this regulation in accordance with the Regulatory Flexibility Act and certifies that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is that this rule directly regulates individuals, who are not, for purposes of the Regulatory Flexibility Act, within the definition of small entities established by 5 U.S.C. 601(6). DHS received no public comments challenging this certification.

List of Subjects

Accordingly, DHS adopts the regulatory amendments proposed on July 22, 2015. In addition, DHS modifies certain provisions based on comments received in response to the proposed rule so that chapter I of title 8 of the Code of Federal Regulations reads as follows:

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135; 6 U.S.C. 1 *et seq.;* E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54.

§ 103.2 [Amended]

■ 2. Section 103.2 is amended by:

■ a. In paragraphs (a)(2) and (3), (b)(6) and (7), and (b)(9) and (10) by removing "an benefit request" and adding in its place "a benefit request", wherever it appears; and

■ b. In paragraph (b)(12) by removing "An benefit request" and adding in its place "A benefit request", wherever it appears.

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2. Section 212.1(q) also issued under section 702, Pub. L. 110–229, 122 Stat. 754, 854.

■ 4. Section 212.7 is amended by:

■ a. Removing the paragraph (a) subject heading; and

■ b. Revising paragraph (e).

The revision reads as follows:

212.7 Waivers of certain grounds of inadmissibility.

* * * * *

(e) *Provisional unlawful presence waivers of inadmissibility.* The provisions of this paragraph (e) apply to certain aliens who are pursuing consular immigrant visa processing.

(1) *Jurisdiction.* USCIS has exclusive jurisdiction to grant a provisional unlawful presence waiver under this paragraph (e). An alien applying for a provisional unlawful presence waiver must file with USCIS the form designated by USCIS, with the fees prescribed in 8 CFR 103.7(b), and in accordance with the form instructions.

(2) *Provisional unlawful presence waiver; in general.* (i) USCIS may adjudicate applications for a provisional unlawful presence waiver of inadmissibility based on section 212(a)(9)(B)(v) of the Act filed by eligible aliens described in paragraph (e)(3) of this section. USCIS will only approve such provisional unlawful presence waiver applications in accordance with the conditions outlined in paragraph (e) of this section. Consistent with section 212(a)(9)(B)(v) of the Act, the decision whether to approve a provisional unlawful presence waiver application is discretionary. A pending or approved provisional unlawful presence waiver does not constitute a grant of a lawful immigration status or a period of stay authorized by the Secretary.

(ii) A pending or an approved provisional unlawful presence waiver does not support the filing of any application for interim immigration benefits, such as employment authorization or an advance parole document. Any application for an advance parole document or employment authorization that is submitted in connection with a provisional unlawful presence waiver application will be rejected.

(3) *Eligible aliens.* Except as provided in paragraph (e)(4) of this section, an alien may be eligible to apply for and receive a provisional unlawful presence waiver for the grounds of inadmissibility under section 212(a)(9)(B)(i)(I) or (II) of the Act if he or she meets the requirements in this paragraph. An alien may be eligible to apply for and receive a waiver if he or she:

(i) Is present in the United States at the time of filing the application for a provisional unlawful presence waiver;

(ii) Provides biometrics to USCIS at a location in the United States designated by USCIS;

(iii) Upon departure, would be inadmissible only under section 212(a)(9)(B)(i) of the Act at the time of the immigrant visa interview;

(iv) Has a case pending with the Department of State, based on:

(A) An approved immigrant visa petition, for which the Department of State immigrant visa processing fee has been paid; or

(B) Selection by the Department of State to participate in the Diversity Visa Program under section 203(c) of the Act for the fiscal year for which the alien registered;

(v) Will depart from the United States to obtain the immigrant visa; and

(vi) Meets the requirements for a waiver provided in section 212(a)(9)(B)(v) of the Act.

(4) *Ineligible aliens.* Notwithstanding paragraph (e)(3) of this section, an alien is ineligible for a provisional unlawful presence waiver under paragraph (e) of this section if:

(i) The alien is under the age of 17;

(ii) The alien does not have a case pending with the Department of State, based on:

(A) An approved immigrant visa petition, for which the Department of State immigrant visa processing fee has been paid; or

(B) Selection by the Department of State to participate in the Diversity Visa program under section 203(c) of the Act for the fiscal year for which the alien registered;

(iii) The alien is in removal proceedings, in which no final order has been entered, unless the removal proceedings are administratively closed and have not been recalendared at the time of filing the application for a provisional unlawful presence waiver;

(iv) The alien is subject to an administratively final order of removal, deportation, or exclusion under any provision of law (including an *in absentia* order under section 240(b)(5) of the Act), unless the alien has already filed and USCIS has already granted, before the alien applies for a provisional unlawful presence waiver under 8 CFR 212.7(e), an application for consent to reapply for admission under section 212(a)(9)(A)(iii) of the Act and 8 CFR 212.2(j);

(v) CBP or ICE, after service of notice under 8 CFR 241.8, has reinstated a prior order of removal under section 241(a)(5) of the Act, either before the filing of the provisional unlawful presence waiver application or while the provisional unlawful presence waiver application is pending; or

(vi) The alien has a pending application with USCIS for lawful permanent resident status.

(5) *Filing.* (i) An alien must file an application for a provisional unlawful presence waiver of the unlawful presence inadmissibility bars under section 212(a)(9)(B)(i)(I) or (II) of the Act on the form designated by USCIS, in accordance with the form instructions, with the fee prescribed in 8 CFR 103.7(b), and with the evidence required by the form instructions.

(ii) An application for a provisional unlawful presence waiver will be rejected and the fee and package returned to the alien if the alien:

(A) Fails to pay the required filing fee or correct filing fee for the provisional unlawful presence waiver application;

(B) Fails to sign the provisional unlawful presence waiver application;

(C) Fails to provide his or her family name, domestic home address, and date of birth;

(D) Is under the age of 17;

(E) Does not include evidence of:

(*1*) An approved immigrant visa petition;

(*2*) Selection by the Department of State to participate in the Diversity Visa Program under section 203(c) of the Act for the fiscal year for which the alien registered; or

(*3*) Eligibility as a derivative beneficiary of an approved immigrant visa petition or of an alien selected for participation in the Diversity Visa Program as provided in this section and outlined in section 203(d) of the Act.

(F) Fails to include documentation evidencing:

(*1*) That the alien has paid the immigrant visa processing fee to the Department of State for the immigrant visa application upon which the alien's approved immigrant visa petition is based; or

(*2*) In the case of a diversity immigrant, that the Department of State selected the alien to participate in the Diversity Visa Program for the fiscal year for which the alien registered.

(6) *Biometrics.* (i) All aliens who apply for a provisional unlawful presence waiver under this section will be required to provide biometrics in accordance with 8 CFR 103.16 and 103.17, as specified on the form instructions.

(ii) *Failure to appear for biometric services.* If an alien fails to appear for a biometric services appointment or fails to provide biometrics in the United States as directed by USCIS, a provisional unlawful presence waiver application will be considered abandoned and denied under 8 CFR 103.2(b)(13). The alien may not appeal or file a motion to reopen or reconsider an abandonment denial under 8 CFR 103.5.

(7) *Burden and standard of proof.* The alien has the burden to establish, by a preponderance of the evidence, eligibility for a provisional unlawful presence waiver as described in this paragraph, and under section 212(a)(9)(B)(v) of the Act, including that the alien merits a favorable exercise of discretion.

(8) *Adjudication.* USCIS will adjudicate a provisional unlawful presence waiver application in accordance with this paragraph and section 212(a)(9)(B)(v) of the Act. If USCIS finds that the alien is not eligible for a provisional unlawful presence waiver, or if USCIS determines in its discretion that a waiver is not warranted, USCIS will deny the waiver application. Notwithstanding 8 CFR 103.2(b)(16), USCIS may deny an application for a provisional unlawful presence waiver without prior issuance of a request for evidence or notice of intent to deny.

(9) *Notice of decision.* (i) USCIS will notify the alien and the alien's attorney of record or accredited representative of the decision in accordance with 8 CFR 103.2(b)(19). USCIS may notify the Department of State of the denial of an application for a provisional unlawful presence waiver. A denial is without prejudice to the alien's filing another provisional unlawful presence waiver application under this paragraph (e), provided the alien meets all of the requirements in this part, including that the alien's case must be pending with the Department of State. An alien also may elect to file a waiver application under paragraph (a)(1) of this section after departing the United States, appearing for his or her immigrant visa interview at the U.S. Embassy or consulate abroad, and after the Department of State determines the alien's admissibility and eligibility for an immigrant visa.

(ii) Denial of an application for a provisional unlawful presence waiver is not a final agency action for purposes of section 10(c) of the Administrative Procedure Act, 5 U.S.C. 704.

(10) *Withdrawal of waiver applications.* An alien may withdraw his or her application for a provisional unlawful presence waiver at any time before USCIS makes a final decision. Once the case is withdrawn, USCIS will close the case and notify the alien and his or her attorney or accredited representative. The alien may file a new application for a provisional unlawful presence waiver, in accordance with the form instructions and required fees, provided that the alien meets all of the requirements included in this paragraph (e).

(11) *Appeals and motions to reopen.* There is no administrative appeal from a denial of a request for a provisional unlawful presence waiver under this section. The alien may not file, pursuant to 8 CFR 103.5, a motion to reopen or reconsider a denial of a provisional unlawful presence waiver application under this section.

(12) *Approval and conditions.* A provisional unlawful presence waiver granted under this section:

(i) Does not take effect unless, and until, the alien who applied for and obtained the provisional unlawful presence waiver:

(A) Departs from the United States;

(B) Appears for an immigrant visa interview at a U.S. Embassy or consulate; and

(C) Is determined to be otherwise eligible for an immigrant visa by the Department of State in light of the approved provisional unlawful presence waiver.

(ii) Waives, upon satisfaction of the conditions described in paragraph (e)(12)(i), the alien's inadmissibility under section 212(a)(9)(B) of the Act only for purposes of the application for an immigrant visa and admission to the United States as an immigrant based on the approved immigrant visa petition upon which a provisional unlawful presence waiver application is based or selection by the Department of State to participate in the Diversity Visa Program under section 203(c) of the Act for the fiscal year for which the alien registered, with such selection being the basis for the alien's provisional unlawful presence waiver application;

(iii) Does not waive any ground of inadmissibility other than, upon satisfaction of the conditions described in paragraph (e)(12)(i), the grounds of inadmissibility under section 212(a)(9)(B)(i)(I) or (II) of the Act.

(13) *Validity.* Until the provisional unlawful presence waiver takes full effect as provided in paragraph (e)(12) of this section, USCIS may reopen and reconsider its decision at any time. Once a provisional unlawful presence waiver takes full effect as defined in paragraph (e)(12) of this section, the period of unlawful presence for which the provisional unlawful presence waiver is granted is waived indefinitely, in accordance with and subject to paragraph (a)(4) of this section.

(14) *Automatic revocation.* The approval of a provisional unlawful presence waiver is revoked automatically if:

(i) The Department of State denies the immigrant visa application after completion of the immigrant visa interview based on a finding that the alien is ineligible to receive an immigrant visa for any reason other than inadmissibility under section 212(a)(9)(B)(i)(I) or (II) of the Act. This automatic revocation does not prevent the alien from applying for a waiver of inadmissibility for unlawful presence under section 212(a)(9)(B)(v) of the Act and 8 CFR 212.7(a) or for any other relief from inadmissibility on any other ground for which a waiver is available and for which the alien may be eligible;

(ii) The immigrant visa petition approval associated with the provisional unlawful presence waiver is at any time revoked, withdrawn, or rendered invalid but not otherwise reinstated for humanitarian reasons or converted to a widow or widower petition;

(iii) The immigrant visa registration is terminated in accordance with section 203(g) of the Act, and has not been reinstated in accordance with section 203(g) of the Act; or

(iv) The alien enters or attempts to reenter the United States without inspection and admission or parole at any time after the alien files the provisional unlawful presence waiver application and before the approval of the provisional unlawful presence waiver takes effect in accordance with paragraph (e)(12) of this section.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2016–17934 Filed 7–28–16; 8:45 am]

BILLING CODE 9111–97–P

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FEDERAL REGISTER

Vol. 81 Friday,
No. 146 July 29, 2016

Part VI

The President

Notice of July 27, 2016—Continuation of the National Emergency With Respect to Lebanon

Federal Register
Vol. 81, No. 146
Friday, July 29, 2016

Presidential Documents

Title 3—

The President

Notice of July 27, 2016

Continuation of the National Emergency With Respect to Lebanon

On August 1, 2007, by Executive Order 13441, the President declared a national emergency with respect to Lebanon pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions; to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation; to reassert Syrian control or contribute to Syrian interference in Lebanon; or to infringe upon or undermine Lebanese sovereignty. Such actions contribute to political and economic instability in that country and the region.

Certain ongoing activities, such as continuing arms transfers to Hizballah that include increasingly sophisticated weapons systems, serve to undermine Lebanese sovereignty, contribute to political and economic instability in Lebanon, and continue to constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on August 1, 2007, and the measures adopted on that date to deal with that emergency, must continue in effect beyond August 1, 2016. In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Lebanon declared in Executive Order 13441.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
July 27, 2016.

[FR Doc. 2016–18215
Filed 7–28–16; 11:15 am]
Billing code 3295–F6–P

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